



**NAVAL
POSTGRADUATE
SCHOOL**

MONTEREY, CALIFORNIA

THESIS

**THE TRANSFORMATION OF THE FBI TO MEET THE
DOMESTIC INTELLIGENCE NEEDS OF THE UNITED
STATES**

by

Eric B. Smith

June 2009

Thesis Advisor:
Thesis Co-Advisor

James J. Wirtz
Robert L. Simeral

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REPORT DOCUMENTATION PAGE
Form Approved OMB No. 0704-0188

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington DC 20503.

1. AGENCY USE ONLY (Leave blank)	2. REPORT DATE June 2009	3. REPORT TYPE AND DATES COVERED Master's Thesis
4. TITLE AND SUBTITLE The Transformation of the FBI to Meet the Domestic Intelligence Needs of the United States		5. FUNDING NUMBERS
6. AUTHOR(S) Eric B. Smith		
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943-5000		8. PERFORMING ORGANIZATION REPORT NUMBER
9. SPONSORING /MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A		10. SPONSORING/MONITORING AGENCY REPORT NUMBER
11. SUPPLEMENTARY NOTES The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. government.		
12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release; distribution is unlimited		12b. DISTRIBUTION CODE A
13. ABSTRACT (maximum 200 words)		
<p>In this thesis, the author presents an analysis of the challenges which confronted the United States government and the intelligence community after September 11, 2001 and examines some of the criticisms of government agency action, specifically the Federal Bureau of Investigation (FBI) in the years prior to the terrorist attacks on the homeland. The author provides a historical overview of the FBI prior to September 11, 2001 and then discusses both the transformational challenges and successes encountered by the FBI post 9/11 in an effort to create a predictive intelligence capability within the agency while maintaining its current statutory responsibilities as the nation's primary federal investigative and law enforcement agency. The thesis examines both military transformational processes, as well as the British Model of Domestic Intelligence, and provides recommendations relevant to the ongoing and strategic transformational efforts by the FBI.</p>		
14. SUBJECT TERMS Federal Bureau of Investigation (FBI), Domestic Intelligence, Predictive Intelligence Capability, Transformation		15. NUMBER OF PAGES 110
		16. PRICE CODE
17. SECURITY CLASSIFICATION OF REPORT Unclassified	18. SECURITY CLASSIFICATION OF THIS PAGE Unclassified	19. SECURITY CLASSIFICATION OF ABSTRACT Unclassified
		20. LIMITATION OF ABSTRACT UU

NSN 7540-01-280-5500

 Standard Form 298 (Rev. 2-89)
 Prescribed by ANSI Std. Z39-18

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**THE TRANSFORMATION OF THE FBI TO MEET THE DOMESTIC
INTELLIGENCE NEEDS OF THE UNITED STATES**

Eric B. Smith

Supervisory Special Agent, Federal Bureau of Investigation, Cleveland, Ohio
B.S., Eastern Kentucky University, 1991

Submitted in partial fulfillment of the
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES
(HOMELAND SECURITY AND DEFENSE)**

from the

**NAVAL POSTGRADUATE SCHOOL
June 2009**

Author: Eric B. Smith

Approved by: James J. Wirtz
Thesis Advisor

Robert L. Simeral, CAPT, USN (ret.)
Co-Advisor

Harold A. Trinkunas, PhD
Chairman, Department of National Security Affairs

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ABSTRACT

In this thesis, the author presents an analysis of the challenges which confronted the United States government and the intelligence community after September 11, 2001 and examines some of the criticisms of government agency action, specifically the Federal Bureau of Investigation (FBI) in the years prior to the terrorist attacks on the homeland. The author provides a historical overview of the FBI prior to September 11, 2001 and then discusses both the transformational challenges and successes encountered by the FBI post 9/11 in an effort to create a predictive intelligence capability within the agency while maintaining its current statutory responsibilities as the nation's primary federal investigative and law enforcement agency. The thesis examines both military transformational processes, as well as the British Model of Domestic Intelligence, and provides recommendations relevant to the ongoing and strategic transformational efforts by the FBI.

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ACKNOWLEDGMENTS

Completing this thesis could not have been possible without the understanding and support of my wife, family, and friends who have provided constant encouragement throughout this process. The weeks spent far from home and the many hours spent at home, but still far away, are a testament to the sacrifices not made by me in the pursuit of this project, but to the patience and grace of my wife who always believed I could balance the rigors of work, school, and family.

I would also like to thank the Federal Bureau of Investigation and the leadership of both the Counterterrorism and Cleveland Divisions for their guidance during the writing of this thesis and their support of the thesis topic and the CHDS program.

My fellow students, faculty, thesis advisors, and editor were also enormously instrumental in the formulation of the ideas of this thesis and without their support and insight this would not have been possible.

Finally I would like to thank the men and women of the FBI who perform their jobs with passion, diligence, courage, and integrity—and who will continue to do so as the bureau transforms to meet the challenges of the twenty-first century

I. INTRODUCTION

A. PROBLEM STATEMENT

Soon after September 11, 2001, the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency came under criticism for failing to prevent Al - Qaeda from perpetrating terrorist acts against the United States. Commissions were formed, investigations ensued, and judgments about the efficacy of these organizations were rendered for Americans to read in fascinating and unprecedented detail. Despite the calls for a new domestic intelligence agency to respond to the new challenge of transnational terrorism, the two major commissions charged with investigating governmental agency actions on 9/11 returned recommendations that fell short of such a change.¹

Of the many criticisms and recommendations offered by these commissions, one of the most important to the future of the FBI and its role as a domestic intelligence agency was provided by the Presidential Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction. The commission supported the FBI's efforts of organizational reform in tumultuous times but advised that the agency could not go it alone—that it must place itself squarely into the intelligence community and subject itself “to the coordinating authority” of the Office of the Director of National Intelligence (ODNI). The commission recommended the FBI place its counterintelligence, counterterrorism, and intelligence directorate under one distinct service within the bureau, ensuring that it does not “escape effective integration into the intelligence community.”² These recommendations were essential to the renewed faith in

¹ National Commission on the Terrorist Attacks upon the United States, “The 9/11 Commission Report,” <http://www.9-11commission.gov/report/911Report.pdf> (accessed January 6, 2008).

² Laurance Silberman and Charles Robb, “The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction,” *Presidential Commission Report*, U.S. Coast Guard (March 31, 2005) http://www.wmd.gov/report/wmd_report.pdf (accessed December 5, 2008).

the FBI's ability to transform, and the swiftness with which the bureau enacted them are a testament to the leadership's understanding of the FBI's future within the intelligence community.

As stated by the actual commission:

The FBI is one of the proudest and most independent agencies in the United States Government. It is on its way to becoming an effective intelligence agency, but it will never arrive if it insists on using only its own map. We recommend that you order an organizational reform of the Bureau that pulls all of its intelligence capabilities into one place and subjects them to the coordinating authority of the DNI [the DNI or Director of National Intelligence is also referred to as the ODNI or the Office of the Director of National Intelligence] - the same authority that the DNI exercises over Defense Department intelligence agencies. Under this recommendation, the counterterrorism and counterintelligence resources of the Bureau would become a single National Security Service inside the FBI. It would of course still be subject to the Attorney General's oversight and to current legal rules. The intelligence reform act almost accomplishes this task, but at crucial points it retreats into ambiguity. Without leadership from the DNI, the FBI is likely to continue escaping effective integration into the Intelligence Community.³

As a result of these and other commission recommendations, the FBI did create a separate branch focusing exclusively on national security matters, bringing together the counterterrorism and counterintelligence divisions under the leadership of an executive assistant director.

This effort at reorganization did not stifle criticism and calls for the FBI to be stripped of its domestic intelligence function. Much of the literature reviewed for this thesis was written either in support of these criticisms or in defense of the FBI as an institution that could transform itself into an organization better suited to defend the United States against the growing, asymmetric threat of the twenty-first century.

This thesis explores the literature addressing the domestic intelligence needs of the United States, discusses the FBI's intelligence role, provides information regarding transformational change ongoing within other governmental organizations, reviews the

³ Silberman and Robb, "The Commission on the Intelligence Capabilities."

British model of domestic intelligence, and, most importantly, describes the transformative process ongoing within the FBI to meet the domestic intelligence requirements of the United States. The primary objective of this work is to describe the historic changes occurring within the FBI and to determine whether these changes will be adequate to meet the intelligence-security needs of the United States.

B. RESEARCH QUESTION

One of the most important questions facing the United States intelligence community (USIC) is whether or not the FBI can continue to transform itself into an organization that retains both its investigative and intelligence functions. The challenge is to create a domestic intelligence and law enforcement agency capable of identifying vulnerabilities, threats, and intelligence gaps in order to create a predictive intelligence picture for U.S. policymakers. This new agency should then be able to target its organic collection assets against these dangers. Finally, if a prosecutorial option exists, and only after all intelligence collection opportunities have been exploited, the FBI may still utilize its lawful powers to arrest suspects. The critical advantage the FBI possesses over other government agencies is that it only needs to obtain Attorney General “Use Authority” to use the intelligence it previously collected as evidence in a criminal prosecution.

The ability to transform intelligence collection into evidence within a single agency is contrary to the methods that must be used by the domestic intelligence agencies of other nations. These agencies do not have the power of arrest and must provide the fruits of their intelligence collection operations to a separate law enforcement organization to conduct an arrest, transform intelligence into evidence, and present the case to a government prosecutor(s) for trial.

This thesis examines the criticism leveled at the FBI since September 11, 2001. It will address how the FBI has and is transforming itself to address the domestic intelligence needs of the United States.

C. LITERATURE REVIEW

The reasons for the creation of a new intelligence agency are varied, as are the ideas about the type of agency that should be created. The primary criticism of the FBI, however, is that it is an investigative agency focused on its traditional law enforcement responsibilities and less an organization focused on collection and providing intelligence to decision makers. Proponents for a new agency suggest the FBI is a “gun culture” and does not adequately perform as a domestic intelligence agency and that it is incapable of doing so given its heritage as a traditional law enforcement organization. Others suggest the culture of the FBI is so resistant to change that even as it attempts to do so, the agency will miss critical indicators of future terrorist attacks.

Many of the models the proponents of change wish to emulate are those used by the British, Canadians, and Australians. These countries have domestic intelligence agencies wholly separate from national police forces or the local police departments that these agencies must use to pursue prosecutions on the investigations (actually intelligence collection operations) they conduct. What makes this process difficult, are the techniques, tactics, and procedures that must be safeguarded during the transitory process of taking the intelligence investigation conducted by one agency and transferring it to a law enforcement organization, whose investigators must then compile, refine, and often times exclude some evidence in bringing a case to trial.

Since there have been no attacks on U.S. soil since those of 9/11, the arguments of those suggesting a change is required have been muted, but not silenced. The following pages will set forth arguments for and against changes to the current collaborative processes in use by the intelligence community today.

1. Key Assumption / Key Question

The most common assumptions used by those proposing change is that the current system is incapable of protecting the United States from terrorist attack. But what facts

have been amassed to suggest this is true in the years following the attacks of September 11, 2001 and the ensuing changes to the FBI and the intelligence community to which it belongs?

For the proponents of a new domestic intelligence agency, how do they envision it operating differently than the Federal Bureau of Investigation? What legislation would need to be passed to allow such investigation to take place? In what ways would a prospective U.S. model be similar to the domestic intelligence agencies in Canada, Australia, the United Kingdom, or even India? Furthermore, how would the United States balance the authorities of this prospective agency with the American public's concerns about the government monitoring their private concerns? Given this country's traditional appreciation for privacy and suspicion that its government spies on citizens without predication, the creation of a new domestic intelligence agency having the power to conduct investigations without predication seems almost antithetical to the beliefs held by the framers of democracy. Most importantly, in what way would the creation of a domestic intelligence agency contribute to the cessation of terror within national borders and how would such an agency provide "evidence" collected under a lower standard of probable cause to a law enforcement agency (presumably the FBI), for use in trial in a United States District Court? This thesis hopes to address these and other questions related to the future of domestic intelligence.

2. Literature Proposing a Separate Domestic Intelligence Agency

Of those advocates leading the charge for a new domestic intelligence agency, separated from the FBI, none has been more prolific in his calls for immediate action than Judge Richard Posner. Judge Posner is a judge on the U.S. Court of Appeals for the Seventh Circuit and a senior lecturer in law at the University of Chicago in Illinois. Two of his books on the subject, *Remaking Domestic Intelligence* and *Uncertain Shield: The U.S. Intelligence System in the Throes of Reform*, showcase his belief that the FBI is not able to transform itself from an agency steeped in a culture of law enforcement into an organization capable of conducting domestic intelligence and terrorism investigations.

As such, the FBI is merely able to implement immature and *ad hoc* programs to counter the terrorist threat to the homeland forcing the Department of Defense to engage in domestic intelligence gathering as evidenced by the National Security Agency's Terrorist Surveillance Program.⁴

Posner's calls for action have roused a series of online discussions or "blogs" dedicated to advancing the conversation on the creation of a new domestic intelligence agency. One such discussion paraphrases and praises Posner's work and further suggests that, based on the FBI's past abuses under Hoover's leadership, the agency is no longer "adept" at performing the duties of a domestic intelligence agency.⁵

Other articles point to the FBI's inability to transform quickly enough into an agency postured to conduct the actions of a domestic intelligence agency. Walter Pincus highlights the comments from the House Permanent Select Committee on Intelligence when it the FBI has yet to develop a comprehensive human source manual, which is projected to integrate the operations of both criminal and intelligence sources.⁶

Acknowledging this shortcoming, Assistant Director Wayne Murphy of the FBI's Directorate of Intelligence testified before congress in July 2007 to disclose the FBI had, in fact, written and disseminated a *Comprehensive Human Source Policy Manual* to the field:

In October 2004, the FBI initiated the FBI's Confidential Human Source Re-engineering Project. Described as the "one-source concept," its key goals were to enhance the consistency, efficiency, and integrity of our Confidential Human Source Program across the FBI and better align source management with our current mission.

⁴ Richard Posner, "Our Domestic Intelligence Crisis," *Washington Post*, December 21, 2005, http://www.washingtonpost.com/wp-dyn/content/article/2005/12/20/AR2005122001053_pf.html (accessed January 5, 2008).

⁵ Edward Morrissey, "Time To Create a Domestic Intelligence Agency?" Captain's Quarters Blog, comment posted on March 19, 2007, <http://www.captainsquartersblog.com/mt/archives/009443.php> (accessed January 5, 2008).

⁶ Walter Pincus, "Intelligence Panel Cites Progress and Shortfalls at FBI," *Washington Post*, July 28, 2006.

...Core elements of the re-engineering project included the development and deployment of a new policy manual, a disciplined validation process, and rigorous training and oversight to ensure compliance with the guidelines. The guidance set forth in the “Confidential Human Source Policy Manual” and the “Confidential Human Source Validation Manual” went into effect in June 2007.

The “Confidential Human Source Policy Manual” establishes FBI policy and procedure for the operation and administration of confidential human sources. This manual ensures the FBI fulfills its intelligence collection and information dissemination mission in compliance with the Attorney General guidelines, requirements, protocols, rules, regulations, and memorandums of understanding with various law enforcement and intelligence community partners governing the FBI’s Confidential Human Source Program.⁷

In Posner’s most recent book on the subject, *Countering Terrorism: Blurred Focus, Halting Steps*, he carries over the argument he began in his first book, *Remaking Domestic Intelligence*. Posner focuses on removing the national security responsibilities from the bureau and placing them into a separate agency. Posner contends that the attributes that make the FBI so skilled at law enforcement are the reasons that make the agency so ill suited to fulfill the role of a domestic intelligence agency.⁸

Amy Zegart’s, *Spying Blind: The CIA, the FBI, and the Origins of 9/11* also conducts an analytical review of the two agencies. Her ideas focus on the inability of both the FBI and the Central Intelligence Agency (CIA) to adapt to the new threats facing the nation after the Cold War. Her arguments are persuasive, as is her research. Dr. Zegart focuses almost exclusively on the FBI and CIA and, through this narrow lens, dissects the agencies’ organizational structure and suggests that reflexive change does not necessarily equal structural evolution.⁹ While there is some truth in this assessment, it

⁷ Wayne Murphy, “Congressional Testimony Regarding the CHS Program,” Congressional Testimony (July 19, 2007), Federal Bureau of Investigation, <http://www.fbi.gov/congress/congress07/murphy071907.htm> (accessed December 5, 2008).

⁸ Richard A. Posner, *Countering Terrorism: Blurred Focus, Halting Steps* (Lantham, MD: Rowman & Littlefield Publishers, Inc., 2007).

⁹ Amy B. Zegart, *Spying Blind: The CIA, the FBI, and the Origins of 9/11* (Princeton, NJ: Princeton University Press, 2007).

should not be construed as an absolute that these agencies cannot fulfill their independent roles of protecting the homeland without first examining the multitude of changes taking place in both agencies to better adapt to the current and future asymmetric threat.

3. Literature Arguing against a Separate Domestic Intelligence Agency

On the other side of the intelligence reform debate, a substantial number of former intelligence and national security professionals are cautioning the nation's policymakers that it would be unwise to change course and further divide the intelligence collection and law enforcement capabilities of the FBI. Their collective argument is this splintering of effort would only serve to create another wall which, prior to the PATRIOT Act (also known as the Uniting and Strengthening American by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001), prevented intelligence sharing among the CIA and the FBI. This wall also complicated the common sense practice of FBI special agents assigned to foreign counterintelligence and counterterrorism matters in openly discussing information obtained in intelligence collection operations with special agents assigned to work traditional criminal matters.¹⁰ If only to prevent something like this from ever happening again, it would be wise, proponents say, to maintain the FBI's primacy in the domestic intelligence arena.

Ronald Kessler, a former FBI special agent, is the author of many books in the intelligence and national security genre as is his most recent book, *The Terrorist Watch: inside the Desperate Race to Stop the Next Attack*. Kessler and those he interviews argue forcefully of the FBI's (and CIA's) efforts to transform and attack the networks of religious-based, single-interest, and "lone-wolf" terrorists taking aim at the nation. He

¹⁰ Jamie Gorelick, "Instructions on Separation of Certain Foreign Counterintelligence and Criminal Investigations," Center for National Security Studies (March 1995), <http://www.cnss.org/1995%20Gorelick%20Memo.pdf> (accessed February 7, 2009.)

reveals how the FBI and CIA are working in concert to defeat the threat abroad and at home, which is contrary to many who suggest cooperation has yet to be found between these two, historically rival, agencies.¹¹

Even prior to the creation of the National Counterterrorism Center (initially named the Terrorist Threat Integration Center [TTIC]), Dr. Larry Wortzel posited that the United States was not in need of a separate domestic intelligence agency or a national fusion center, which he believes would further complicate sharing and “stovepipe” information.¹² Further, Wortzel suggests that the domestic intelligence agencies from which we would potentially model in the United States have not been particularly effective:

The events of September 11... [have] led many policymakers to recommend the creation of a domestic intelligence agency to gather and analyze intelligence on people and threats generated from within the United States. This approach has not been particularly effective in Canada, although it has worked for England; however, such an agency would seriously intrude on the civil liberties of Americans.¹³

Wortzel continues this line of thinking by stating that instead of creating yet more governmental organizations, Congress and the President should enact legislation to ensure the FBI and CIA collaborate more effectively.¹⁴

4. A Review of Literature Proposing Changes to the Intelligence Community, but Fall Short of Proposing a New Domestic Intelligence Agency

Two of the most comprehensive reports on the intelligence community post 9/11 are the *National Commission on the Terrorist Attacks Upon the United States* or *9/11*

¹¹ Ronald Kessler, *The Terrorist Watch: Inside the Desperate Race to Stop the Next Attack*, 1st ed., (New York: Crown Forum, 2007).

¹² Larry Wortzel, “Americans Do Not Need a New Domestic Spy Agency to Improve Intelligence and Homeland Security,” The Heritage Foundation (January 10, 2003), <http://www.heritage.org/Research/HomelandSecurity/EM848.cfm> (accessed January 5, 2008).

¹³ Wortzel, “Americans Do Not Need a New Domestic Spy Agency.”

¹⁴ Ibid.

Commission Report (for short) and the *Commission on the Intelligence Capabilities of the United States*, also known as the WMD report. Within these two reports arguably exists the most comprehensive review of the intelligence community after the attacks of 9/11 and the failure to locate weapons of mass destruction in Iraq.

These two bipartisan commissions, comprised of individuals with access to highly classified information and the organizations which produce the same, failed to reach the same conclusions as those of Posner, Zegart, and others who called for establishing a new domestic intelligence agency divorced of the FBI. Critics might assume their positions within the government is precisely the reason why commissioners of these reports fell short of calling for such radical changes to the structure of the intelligence community. Whatever the reasons, these two commissions produced exhaustive reports on the structure, processes, and results of the organizations that comprise the intelligence community and yet declined to propose the creation of a new domestic intelligence agency. These reports give considerable weight to the arguments expressed by Kessler, Wortzel, and others that it would be unwise to create a new domestic intelligence apparatus. Wortzel states, “Clearly, the threat of future terrorist attacks on the homeland requires that the current process of information sharing within the entire intelligence community be changed. What the federal government should not do is further ‘stovepipe’ and compartmentalize intelligence in an additional agency.”¹⁵ The creation of a new agency would only further complicate and dangerously slow the dissemination of domestic threat information with potentially catastrophic consequences.

The question then remains, how does the United States adequately protect itself from terrorist attack, foreign counterintelligence penetration, and international criminal enterprises without intruding further into the civil liberties of its citizens? It can only do so by striking a careful balance of law enforcement and intelligence collection operations under a single agency charged with the mandate of maintaining a strict adherence to the Constitution of the United States, and doing so in a way that efficiently exploits

¹⁵ Wortzel, “Americans Do Not Need a New Domestic Spy Agency.”

intelligence, fuses collection efforts, and disrupts terrorist, foreign intelligence, and criminal enterprises within a historically proven legal framework.

Chapter II reviews the state of the FBI pre-9/11 and the role of counterterrorism within the organization. Chapter III addresses transformation strategies against a backdrop of regenerating threats against the homeland and how those threat shape the way the agency transforms. Chapter III will also discuss the British model of domestic intelligence as conducted by the British Security Service or MI-5.

In Chapter IV, the thesis reviews the achievements and progress the FBI has made to date and the implementation of a new business model called “SET,” which is short for Strategic Execution Team. This strategy shifts the paradigm of the FBI as an agency bent first on arrests and prosecutions into one focused on collection and exploitation first, followed by timely and well-orchestrated disruptions of networks and terrorist enterprises.

Chapter V draws conclusions about the FBI’s progress and makes recommendations for the FBI’s future as a hybrid agency capable of conducting both intelligence collection and law enforcement operations and attempts to make the case that separating one from the other will result in future intelligence and security failures.

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II. STATE OF THE FBI PRIOR TO SEPTEMBER 11, 2001

A. STRUCTURE

To discuss the current and proposed changes underway at the FBI and how these changes demonstrate a departure from the way the FBI has historically conducted operations, it is necessary to look at portions of the bureau's history in order to place into context the changes taking place in the agency's effort to confront and defeat the terrorist threat to the homeland.

Prior to September 11, 2001 and for most of the FBI's modern history, the bureau was divided up into "divisions" at FBI headquarters (FBIHQ) and "field offices" throughout the continental United States and certain territories. These divisions were responsible for the management and oversight of the programs for which they were named. For example, the Criminal Division was and remains responsible for providing oversight, direction, and management of investigative programs focused and continue to focus on financial crime, violent crime, organized crime, public corruption, etc; the Counterintelligence Division addresses foreign intelligence threats, and so on.

As a direct result of the FBI's long and storied law enforcement heritage, the division which wielded the most influence in the bureau prior to September 11, 2001 was the Criminal Investigative Division (CID). As the program constituting the main function of the FBI, the Criminal Division was responsible for the oversight of all criminal investigations throughout the FBI's 56 field offices. The division has a history rich in achievements and highlights, many of which have solidified the FBI's reputation as one of, if not the, premier law enforcement organization in the world. The Counterterrorism Division, which, interestingly, did not attain divisional status until the late 1990's, also had its roots in the criminal division, where it started as a "section" within CID.

Separate from headquarters and spread across the entire continental United States, including Hawaii and Alaska, were and are 56 "field offices" which comprise the actual investigative body of the FBI. Within each of these divisions is housed the special agent

and analytical personnel actively investigating the nearly 300 violations for which the FBI has jurisdiction. This thesis will provide more details about the makeup of the field offices, but further examination of the headquarters construct is necessary in order to understand the driving force behind the changes taking place bureau-wide.

Prior to September 11, 2001, the FBI was primarily vested in criminal investigations as “Staff Statement Number 9” in the 9/11 Commission Report effectively demonstrates. In this statement, it reports the FBI had only 1,300 “agents” working on counterterrorism matters in September 2001, making this number only about 6 percent of the total FBI workforce.¹⁶ While one can argue with the accuracy of the numbers in terms of percentages (the staff statement compared the number of agents working counterterrorism matters to the entire bureau workforce, instead of the actual number of FBI special agents, which at the time was about 11,000), it is difficult to defend the idea the FBI was dedicating adequate resources to counter the growing threat of terrorism.

Regardless of the numbers, the FBI’s work in counterterrorism was not consistently being conducted in a proactive fashion. In fact, and as further discussed in “Staff Statement 9,” the FBI was primarily conducting investigative activities in a reactive way—to events that had already occurred as opposed to addressing the more difficult mission of proactive investigations, utilizing and creating a predictive intelligence capacity to thwart acts of terror—not simply reacting to events. This is far different than what is taking place within the bureau today, specifically as it relates to the way counterterrorism division and field offices are proactively addressing threats and utilizing sources to target hotbeds of radicalism both domestically and abroad. The elimination of the old reactive approach is what cuts to the heart of why the FBI is embracing transformation.

¹⁶ National Commission on Terrorist Attacks upon the United States, “Law Enforcement, Counterterrorism, and Intelligence Collection in the United States Prior to 9/11, Staff Statement Number 9,” http://www.9-11commission.gov/staff_statements/staff_statement_9.pdf (accessed January 5, 2008).

B. CHANGING THE PARADIGM

Just as the way the terrorist threat has changed the culture of U.S. society, so too has it changed the culture within FBIHQ. The “center of gravity” within the bureau is vastly different than it was prior to 9/11 with Counterterrorism Division (CTD) investigations now being the most heavily addressed by senior executive leadership. This change of focus forces CTD to direct operations in the field through its headquarters' supervisors and unit chiefs who are placed in charge of regions and investigative sub-programs. Without question, there is no other division in the FBI that has such direct oversight of investigations as the way operations are managed by CTD to the field offices.

Although the transformational progress of the FBI will be discussed in a following chapter, some space will be devoted here to provide the reader an overview of the primary investigative and support divisions as they currently exist within the FBI. In order of descending nationally dictated priorities, the FBI is responsible for the following investigative programs:

1. Counterterrorism Division

The mission of the Counterterrorism Division is to detect, disrupt, and dismantle terrorists or terrorist activities in the United States before they act; to identify and prevent acts of terrorism by individuals with a terrorist agenda acting alone; to detect, disrupt, and dismantle terrorist support networks, including financial support networks; to enhance the U.S. capability to ascertain the reliability, implications, and details of terrorist threats and to improve the capacity to disseminate threat-related information to local, state, and federal agencies, and to the private sector as needed; and to enhance the FBI's overall

contribution to the U.S. intelligence community and to senior policy makers in government by providing timely and accurate in-depth analysis of the terrorist threat and other information of value on an on-going basis.¹⁷

Within this framework, CTD has two primary operational branches, both of which have investigative primacy over a specific target set. Operations Branch I is responsible for international terror groups, that is, foreign-based terror groups and potential “sleeper agents” here in the United States. Operations Branch II is responsible for domestic terror groups, which typically exist in one of several categories: white supremacists, militia movements, sovereign citizens, black separatists, anti-abortion extremists, animal and earth liberation movements, and environmental extremists.

Given the terror attacks of 9/11, the continued threat to the homeland by Al-Qa’ida-inspired groups, and the perceived persecution of Islam from the military actions in both Iraq and Afghanistan, Operations Branch I is a robust organization broken down further into two investigative sections. These two sections comprise the oversight and program management function for all international terrorism investigations taking place within the United States or overseas where the FBI is a party in interest. They are explained further below.

a. International Terrorism Operations Section I (ITOS I)

The primary function of ITOS I is to support, coordinate, and provide oversight of FBI international counterterrorism operations as they specifically relate to international extremist groups and/or individuals who are directly or indirectly targeting the United States. ITOS I is broken down further into six (evenly by overall caseload) Continental United States (CONUS) Units which oversee FBI Counterterrorism Investigations in a specified geographic area. The mission of ITOS I is directly in line with the overall mission of the FBI's number one priority: the prevention of terrorist acts

¹⁷ Federal Bureau of Investigation, “Counterterrorism and Terrorism,” Federal Bureau of Investigation, <http://www.fbi.gov/terrorinfo/counterterrorism/waronterrorhome.htm> (accessed August 13, 2008).

against the United States and its interests abroad. Put simply, ITOS I is domestically focused against terrorist actors, facilitators, and supporters. See Figure 1 below to see the geographic breakdown within CONUS.¹⁸

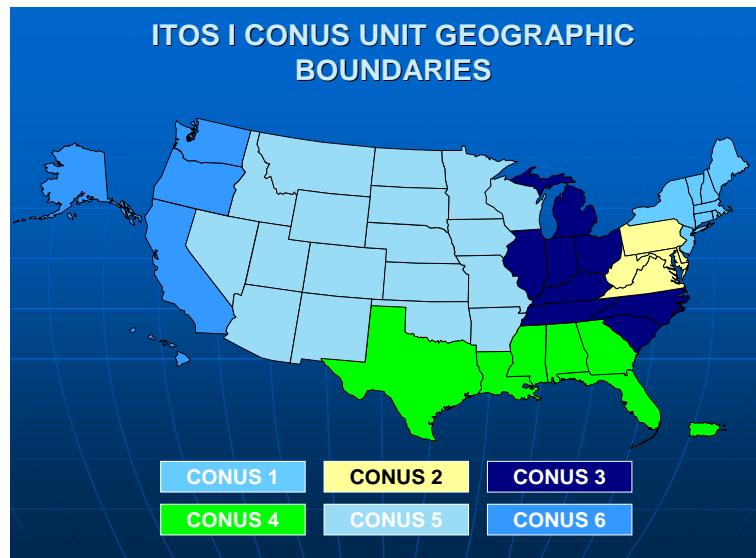


Figure 1. CONUS Unit Boundaries

b. International Terrorism Operations Section II (ITOS II):

The primary function of ITOS II is to support, coordinate, and provide oversight of FBI international counterterrorism operations overseas. ITOS II is broken down further into six units: Extraterritorial Investigations Unit's One, Two, and Three; the Strategic Operations Unit; the Fly Team; and the High Value Detainee Unit. The mission of ITOS II is directly in line with the overall mission of the FBI's number one priority, the prevention of terrorist acts against the United States and its interests abroad. Consequently, ITOS II is focused externally against terrorist actors, facilitators, and supporters currently outside the continental United States (OCONUS). See Figure 2 below.¹⁹

¹⁸ Kevin Thuman, "Counterterrorism Division - Operations Branch I Reorganization," (internal document, Federal Bureau of Investigations, Washington, D.C., 2007).

¹⁹ Ibid.

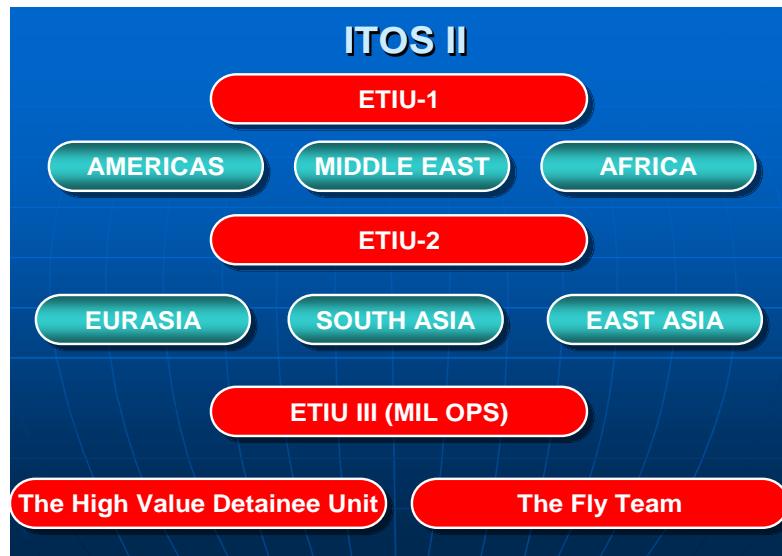


Figure 2. ITOS II Unit Breakdown

2. Counterintelligence Division

As stated by the FBI:

The foreign intelligence threat currently facing the United States from foreign nation-state and non-state actors is increasingly complex and asymmetrical. U.S. national security is gravely threatened by foreign intelligence services and their assets who are dedicated to using all means at their disposal to obtain strategic information which enhances the strategic position of their country while disadvantaging the United States. Our adversaries are especially active in areas where they perceive great Foreign Counterintelligence (FCI) vulnerabilities.

Protection of U.S. national security is the FBI's top priority. FCI is a critical component of the FBI's overall strategy, second only to counterterrorism. As the lead agency for FCI in the United States, and the primary investigative component of the Department of Justice, the FBI has the responsibility to oversee the integration of U.S. law enforcement and intelligence efforts to ensure that all available means are brought to bear to mitigate this ongoing and daunting threat, consistent with our laws and policy.²⁰

²⁰ Federal Bureau of Investigation, "National Security Branch," Federal Bureau of Investigation, <http://www.fbi.gov/hq/nsb/nsb.htm> (accessed August 13, 2008).

The Counterintelligence Division is also a division rich with successes in the bureau's hundred-year history. In addition to an infamous list of spies caught by the FBI, including former CIA Officer Aldrich Ames, many might be surprised to learn the FBI operated an overseas clandestine intelligence service known as the SIS or the Special Intelligence Service prior to and throughout World War II. The SIS had as many as 360 agents conducting clandestine intelligence activities throughout Central and South America in much the same way the CIA operates today.²¹ Although disbanded shortly after World War II, this service was the backbone of Director J. Edgar Hoover's argument that the United States did not need a new "Worldwide Intelligence Service" as proposed by William J. "Wild Bill" Donovan, then the head of the CIA's predecessor organization, the Office of Strategic Services (OSS).²² Director Hoover ultimately lost the argument with the passage of the National Security Act of 1947, which formally created the Central Intelligence Agency.

The FBI and the counterintelligence division also suffered some well-publicized failures such as the identification, arrest, and conviction of Robert Hanssen in February of 2001. Hanssen, a FBI special agent assigned to Russian Counterintelligence matters, was convicted of selling thousands of pages of classified intelligence to first Soviet and later Russian intelligence organizations. The deception conducted by Hanssen would make him one of the most dangerous double agents in U.S. history.²³ Despite this, the successes of the division continue today: in Investigation 2007 alone, the FBI Counterintelligence Division, in conjunction with the Department of Justice's (DOJ) United States Attorney's Office, succeeded in convicting 24 individuals for espionage or otherwise attempting to steal the nation's most sensitive information.²⁴

²¹ Ronald Kessler, *The Bureau: The Secret History of the FBI* (New York, N.Y.: St. Martin's Press, 2002).

²² Ibid.

²³ David Vise, *The Bureau and the Mole* (New York, N.Y.: Atlantic Monthly Press, 2002).

²⁴ Robert Mueller, "Statement before Senate Judiciary Committee," Congressional Testimony, Federal Bureau of Investigation, <http://www.fbi.gov/congress/congress08/mueller030508.htm> (accessed February 16, 2009).

3. Cyber Investigations

According to the FBI's public website(s):

The FBI's Cyber Division, established in 2002, is dedicated to applying the highest level of technical capital toward combating cyber-based terrorism, hostile intelligence operations conducted over the Internet, and cyber crime. By aggregating cyber-centered investigations within one division, the FBI is able to more effectively and efficiently identify, investigate, and neutralize cyber threats. As the nation becomes more cyber-dependent, the FBI's Cyber Division will be the vanguard of security for its citizens and its critical infrastructures.²⁵

Of the FBI's investigative divisions, the Cyber Division is the newest to be formed in response to a growing, pervasive threat against not only computer infrastructure but actual infrastructure which is controlled by an increasingly complex system of interwoven technologies. The Cyber Division works collaboratively with all of the other investigative divisions to address a sophisticated enemy that is more than college-aged hackers attacking government websites.

Criminals of today see computer technology and internet connectivity as a way to insulate themselves from their nefarious activity and at the same time increase their reach, impacting a much larger pool of potential victims than ever thought possible. Criminal elements that infect governmental agencies and private corporations with “Trojan Worms” or other virus cause millions of dollars of damage which can be passed on to the taxpayer by way of increased service fees. Denial of service attacks are also used by hostile foreign services as a way of probing the strength of government websites, which could one day be used as a prelude to an actual attack against the homeland or U.S. interests abroad. Even on their own, these attacks could constitute what Marine General James Cartwright calls “a weapon of mass destruction.”²⁶

²⁵ Federal Bureau of Investigation, “Cyber Investigations - Cybercrime,” Federal Bureau of Investigation, <http://www.fbi.gov/cyberinvest/cyberhome.htm> (accessed January 13, 2008).

²⁶ Bob Brewin, “U.S., British Officials Target Chinese as Source of Cyberattacks,” *Government Executive*, December 4, 2007, http://www.govexec.com/story_page.cfm?articleid=38734&dcn=todaysnews (accessed February 16, 2009).

4. Criminal Investigative Division (CID)

According to the *Federal Bureau of Investigation Strategic Plan, 2004 – 2009*:

The mission of the Criminal Investigative Division (CID) is to coordinate, manage, and direct investigative programs focused on financial crime, violent crime, organized crime, public corruption, violation of individual civil rights, drug related crime, and informant matters associated with these investigative areas. Through centralized control, CID guides the investigative efforts of field offices against criminal enterprises and individual federal crimes in the continental and territorial United States, as well as internationally. CID is responsible for devising policy matters and techniques to be used in complicated investigations, as well as for making a continuous review of investigative procedures and programs. In addition, CID maintains top-level liaison with officials in the Department of Justice, as well as other Government agencies and foreign law enforcement officials, on matters under the jurisdiction of the FBI for the purpose of coordinating and resolving major policy matters concerning both criminal cases and civil litigations.²⁷

Within the Criminal Investigation Division, the FBI again ranks or sets priorities among its investigative responsibilities as follows:

- Public Corruption
- Civil Rights
- Transnational / National Criminal Enterprises
- White Collar Crime
- Significant Violent Crime

The Criminal Investigative Division has been, for decades, the backbone of the FBI. From hunting and apprehending violent criminals independently, or as part of a task force, to arresting corporate criminals bent on bilking the public and its own shareholders of millions, sometimes billions of dollars, the CID continues to be a major component of the FBI. Despite the post 9/11 reorganization instituted by Director Robert S. Mueller, III, which sent several thousand agents to address immediate and lingering

²⁷ Federal Bureau of Investigation, *Federal Bureau of Investigation Strategic Plan 2004-2009*, Federal Bureau of Investigation, <http://www.fbi.gov/publications/strategicplan/strategicplante.htm#ci> (accessed September 15, 2008).

counterterrorism and counterintelligence threats, approximately 50 percent of the special agents in the FBI are still assigned to work criminal investigations. As stated by the director in a hearing before the Senate Judiciary Committee in March of 2008:

To meet our national security mission, the FBI had to shift personnel and resources, but we remain committed to our major criminal responsibilities. While Americans justifiably worry about terrorism, it is crime that most directly touches their lives. Currently, we have roughly a 50/50 balance between national security and criminal programs. To make the best use of these resources, we will continue to focus on those areas where we bring something unique to the table and to target those criminal threats against which we have the most substantial and lasting impact.²⁸

In the same testimony, Director Mueller explains the end result of reassigning so many agents to the National Security Branch is the FBI's Criminal Division has been forced to address a much more focused group of criminal actions, "In recent years, we have moved away from drug cases and smaller white collar crimes, but we have dedicated more agents and more resources to public corruption, violent crime, civil rights, transnational organized crime, corporate fraud, and crimes against children."²⁹

Despite this more restrictive use of criminal investigative resources, CID amassed an impressive set of statistical accomplishments in fiscal year 2007, including working more than 53,000 cases. What's more impressive is an indictment to conviction rate of nearly 70 percent with 17,728 arrests, and 12,406 convictions.³⁰ As it is perhaps only jokingly said within the halls of FBI offices throughout the country, "Criminal Division still pays the bills." Clearly, the FBI's successes in criminal investigations are important to the nation, the state, and local law enforcement agencies with whom there exists a critical and growing partnership.

²⁸ Mueller, "Statement before Senate Judiciary Committee."

²⁹ Ibid.

³⁰ Ibid.

C. FIELD DIVISIONS AND INVESTIGATIVE PRIORITIES

Under the leadership of Director Louis J. Freeh (September 1, 1993 - June 25, 2001), and arguably under all previous directors save J. Edgar Hoover (May 10, 1924 - May 2, 1972), the center of gravity for the FBI's leadership was situated at the field office level, under the supervision of powerful "special agent's in charge" (SAC) and in some of the largest offices, "assistant director's in charge" (ADIC).³¹ This was particularly evident under Director Freeh's leadership as the FBI began to actually eliminate supervisory positions at headquarters, forcing senior leaders back to the field to manage operations in a more autonomous, decentralized fashion, leaving FBIHQ to focus on issues related to program management, policy, and administration.

One of these headquarters' policies was to ensure the FBI field offices were responsive in dealing with the crime issues impacting the region for which they had operational oversight. Until recently, the FBI accomplished this by executing what were called "Crime Surveys." These surveys collected data among federal, state, and local agencies, including the District and United States Attorney's Offices in order to discern what crime problems were perceived as most troubling the area. From this data, the FBI field office prioritized its goals and objectives to more accurately reflect the needs of the region, to better assist state and local partners, and to better protect the citizenry from violence, fraud, and/or terrorism.

Given that crime problems differ from region to region, many of the field offices that ranked their investigative priorities based on their respective crime surveys often found their priorities differed from the national priorities established in Washington, D.C. For example, in some regions violent crime was not as defined a problem as say, bank fraud, health care fraud, or mortgage fraud. In this particular field office then, the violent crime program would be seconded to the white-collar crime program in terms of importance. State and local law enforcement agencies can provide critical "ground truth" with respect to understanding the primary crime issue in their areas of responsibility.

³¹ Federal Bureau Instigations, "Directors, Then and Now," Federal Bureau of Investigations, <http://www.fbi.gov/libref/directors/freeh.htm> (accessed February 16, 2009).

In a recent meeting with the deputy chief of a major metropolitan sheriff's department, the author asked the chief to name his city's number one crime concern. Without pause, the chief said his major threat was that neighborhoods were increasingly falling sway to gang violence and citizens were not able to sit on their own front porches during the evening for fear of attack and intimidation. It is this ground truth, combined with analytical research about emerging crime trends, which provides the optimal way to determine an agency's investigative priorities.

Prior to 9/11, the debate about these conflicts between field office and headquarters concerning investigative priorities was much more insular and limited to SAC conferences and inspection findings. After 9/11, this topic became the focus of critical importance as internal policies were enacted by the FBI to place terrorism at the top of each division's investigative priority list. Today, each field office places terrorism at the top of each of its lists of investigative priorities, but a more analytical review of this dictated prioritization is taking place and may impact individual field offices rankings as will be seen later.

D. THE ROAD AHEAD

September 11, 2001 revealed certain, but not necessarily unknown, flaws in the way the FBI, in general, and the Counterterrorism Division, in particular, were structured. While the leadership understood the importance of the work, few realized the magnitude to which terrorists could a) strike at the homeland and b) impact citizens psychologically. CTD was an understaffed division working on the fifth floor of FBI headquarters and had limited connectivity to other agencies within the intelligence community or the Department of Defense except in some cases where managers understood their importance and made personal relationships to affect better exchanges of terrorist-related information.

Likewise, other agencies were unaware of the FBI's ability to collect considerable amounts of human intelligence through an impressive stable of cooperating witnesses, confidential informants, and intelligence assets. Concurrently, the FBI agent source

handlers were not effectively targeting their sources beyond the borders of their own field division and so much of the human intelligence (HUMINT) capability of these assets was not exploited. Recent changes within CTD, such as the creation of the Counterterrorism HUMINT Operations Unit (CHOU), allows the FBI to more effectively target counterterrorism sources by temporarily transplanting hand-picked assets from one field office to address a critical need in another.

While the organizational structure of CTD changed dramatically in the wake of 9/11, little changed in the ensuing six years, that is, until January of 2008 when a reorganization of CTD's Operations Branch One took effect. The reorganization or "realignment" has streamlined CTD's approach to managing counterterrorism (CT cases through an interdivisional breakout of responsibilities between the two sections which make up Operations Branch One.

The FBI's Counterterrorism Division is broken down into two operational branches. These branches, named "Operations Branch I and II," divide the divisions' investigative responsibilities as follows: Operations Branch I is responsible for the program management of all investigations related to international terrorism irrespective of the threat. This means that the two sections under Operations Branch I investigate radical Islamist organizations such as Al-Qa'ida, Hamas, and Hizballah as well as the Provisional Irish Republican Army, Basque Separatists or "ETA," the Tamil Tigers, and many others. Operations Branch II, on the other hand, is responsible for domestic threats such as racial supremacist organizations like Aryan Nations, the Ku Klux Klan, and World Church of the Creator; single interest terror groups like the Earth and Animal Liberation Front, and, finally, violent separatist organizations. Until very recently, Operations Branch II maintained the FBI's rapid investigative projection arm commonly known as the "Fly Team," but that too has been relocated to Operations Branch I as the greatest need for these assets is OCONUS when terrorism strikes U.S. interests or allies abroad.

To create a division that fully exploits its resources and the knowledge it has acquired over the past five years, additional changes are being enacted by the FBI, most

recent of which is the implementation of the concepts created by the FBI’s Strategic Execution Team (SET). The SET process is determined to produce a systematic and uniform field intelligence collection capacity focused on a thorough understanding of each field office’s “domain” or area of operations. This domain awareness is the capability of the field intelligence group (FIG) to understand the current threat picture as well as the vulnerabilities and then address these gaps through collection.

This type of strategic thinking has been conducted somewhat haphazardly until recently and formalizing this understanding is critical in the FBI’s maturation as a domestic intelligence and law enforcement agency. As Director Mueller stated, “Today, we are focused on prevention, not simply prosecution. We have shifted from detecting, deterring, and disrupting terrorist enterprises to detecting, penetrating, and dismantling such enterprises — part of the FBI’s larger culture shift to a threat-driven intelligence and law enforcement agency.”³²

History shows the FBI’s role as a domestic intelligence agency is nearly a century in the making. After the formation of the FBI in 1908, then known simply as the “Bureau of Investigation,” agents were marshaled to combat the threat of anarchists and “socialists” such as those who firebombed a series of homes and business throughout the United States between 1915 and 1920. Even President Woodrow Wilson’s own Attorney General, A. Mitchell Palmer, was the victim of a bombing which nearly took his life and those of his family. These bombings and violent labor strikes prompted Palmer to conduct a series of group arrests, known as the “Palmer Raids,” against those suspected of sympathizing with the Bolsheviks who came to power in Russia in 1917. Palmer promoted a young DOJ lawyer named J. Edgar Hoover to oversee these raids and subsequent deportations of those identified as aliens presenting a threat to the national security of the United States. Despite the backlash that would later come with the conduct of these raids, the actions were largely applauded at the time given the massive strikes and work stoppages, which resulted from labor unrest — as much as a result of socialist and anarchist organizations throughout the country.

³² Mueller, “Statement before Senate Judiciary Committee.”

In World War II, the FBI tracked the spies of the Axis powers both inside the United States and overseas stopping plots such as a group of Nazi saboteurs who landed on the New Jersey shore in 1942 bent on attacking U.S. defense plants. After World War II, the FBI followed the trail of expatriate Nazi leaders in South America following Germany's surrender in 1945.

During the long Cold War that followed the brief peace after WW II, the FBI again was called upon to track the growing counterintelligence threat of the Soviet Union. From Soviet spies to double agents, the FBI spent decades identifying these spies and turning them back against their own homeland with spectacular success. Unfortunately, the FBI was also forced to track and arrest many U.S. citizens turned by the Soviets against the homeland. From the Rosenbergs, John Walker, and Jonathan Pollard, to Aldrich Ames and Robert Hanssen, the FBI has time and again achieved successes as both a law enforcement and intelligence agency capable of implementing sensitive collection techniques and using that collection as evidence in a court of law.

Today the FBI is again facing a period of great change, which requires it to transform itself into a more agile, predictive agency capable of preventing acts of terror, espionage, and crime as opposed to investigating the crimes after the fact.

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III. TRANSFORMATION IN A DANGEROUS AGE

A. TRANSFORMATION CONSIDERATIONS

The major issue in the ongoing debate of whether or not to create a new agency dedicated to domestic intelligence rests primarily in the answer to this question: Will the FBI be able to assume the role of the nation’s domestic intelligence agency given its law enforcement culture. Some argue that the FBI, as an agency within the Department of Justice, cannot transition from a culture whose primary mission is to investigate crimes, collect evidence, and then present it for prosecution to one that subordinates prosecutions to intelligence collection. But, the distance between intelligence collection and criminal prosecution is not measured by culture; rather, it is measured by time.

It is unlikely that Americans will find fault in an agency that as part of its core values maintains a “rigorous obedience to the Constitution of the United States.”³³ As one of the FBI’s written “Core Values,” this statement should lessen the anxiety of those who believe the government’s agents pry into the lives of American citizens without proper predication. There are those who may believe, however, that such statements show a degree of naivety. Intelligence agencies, by nature, must be able to exist in ambiguous space between right and wrong.

So where does the common ground lie between the two schools of thought? Clearly, the FBI will not embrace a “collect at all costs” mentality, which raises questions about the legality of the intelligence or the evidence it collects during the course of its investigations. It will, however, attempt to promote a culture of “prevention through intelligence” using every facet of its traditional investigative, HUMINT collection, and analytical capabilities in an attempt to *prevent* crime, acts of terror, or other national security threats against the United States.

³³ Federal Bureau of Investigation, “About Us - Quick Facts,” Federal Bureau of Investigations, <http://www.fbi.gov/quickfacts.htm> (accessed February 21, 2009).

Even before the FBI instituted the transformational doctrine established in the SET framework the Counterterrorism Division, it placed new requirements on itself and on the 56 field offices to second quick criminal prosecutions to long-term intelligence collection in most if not all of the FBI's Counterterrorism Investigations.

The establishment of this new policy has changed the nature of the FBI's business practices. While there has been some internal resistance, it is slowly creating an FBI that no longer sees prosecution as the solitary goal of every case, but rather a tool to be used in the disruption phase of the investigation — after the intelligence collection process has run its course and is no longer providing information of intelligence value. This idea gave birth to transformational policies set forth in the SET process for incorporation into the entire FBI.

1. A “Hybrid” Agency

The fact that the FBI is able to maintain the organic prosecutorial option, in addition to its domestic intelligence function, makes the FBI a hybrid agency capable of collecting critical intelligence about a target and disseminating information to the intelligence community while the investigation is producing it, and at the same time, cataloguing and preserving that information for use as evidence in a potential trial. Since most terrorism or even foreign intelligence investigations are, by their very nature, criminal conspiracies or enterprises, the ability to collect and disseminate intelligence and then *use* that collection as evidence seems like a *fait accompli*. The antithesis of this would be to separate these two interwoven pieces of the investigation fabric and force one agency to collect intelligence and another to act as merely the legal vehicle to take these “intelligence collection” cases to court for prosecution. As incongruous as it sounds, this is what is taking place in many of agencies used by the FBI's foreign partners.

In response, some suggest that a domestic intelligence agency, bound by laws that will involve bringing evidence before a federal bench, will adversely inhibit the agency, investigator, or intelligence officer in the course of their duties for fear of disclosing

sensitive sources and methods in a public forum. Through such disclosure, the intelligence agency inadvertently tips its hand to the enemy by educating them on how the government collects intelligence against targets, which helps them thwart investigators in the future.

2. FBI Investigations and FISA

The FBI has for years carried the responsibilities of a hybrid agency, but it was not until 1978 and the passage of the Foreign Intelligence Surveillance Act (FISA) that the FBI's use of electronic surveillance was authorized by a court. From World War II until that time, according to Loch Johnson and James Wirtz, "the procedures authorizing the collection of electronic surveillance for national security purposes [was] presidential authorization."³⁴ The use of FISA authorized electronic surveillance has grown exponentially since 9/11, but it has not done so carelessly.

National security investigations conducted by the FBI must be based on legitimate predication. The three levels of investigations within the FBI's National Security Branch are assessments, preliminary investigations, and full investigations. Each level of investigation is limited on the number of techniques that investigators may use, from the limited checking of open source and government data bases (assessments) all the way to electronic surveillance (full investigations).

A complaint or other intelligence is received by the FBI and, based on the confidence level of the information and the credibility of the source, the agent begins the process of opening the case. First, a supervisor is notified by the agent, and, then, electronically through an automated case opening process (and after a review of the information), the supervisor then approves or denies the opening of the investigation. For sensitive investigative matters and for cases involving first amendment protected speech, the field office's chief division counsel (CDC) must review and support the supervisor's

³⁴ Loch Johnson and James Wirtz, *Intelligence and National Security: The Secret World of Spies: An Anthology*, 2nd ed. (New York: Oxford University Press, 2008).

decision to open a case. In some circumstances, the Assistant Special Agent in Charge (ASAC) and the Special Agent in Charge (SAC) must also approve the opening.

This review process ensures FBI investigations are being opened in accordance with the Attorney General guidelines that set forth the legal requirements used by the FBI to open and investigate both national security and traditional criminal matters. The use of FISA authorized techniques, such as electronic surveillance, can also be a complex and onerous task, but it was made so purposely to ensure the most sensitive investigative techniques are used after all other measures have been proven unsuccessful or when exigent circumstances dictate their immediate invocation.

Once an agent has opened a full investigation, he or she can use a multitude of investigative techniques to pursue a subject, the most intrusive of which is electronic surveillance. If an agent wishes to pursue telephonic surveillance on a subject, for instance, he or she must do so by creating an application wherein the agent sets forth evidence to show the subject is a “foreign power” or an “agent of a foreign power.” In much the same way a research paper is written, the agent must ensure all the corroboration, sources, and incriminating data is kept in a separate file for a legal review to which all electronic surveillance cases are subjected.

Once the agent completes this application, it is forwarded to the supervisor for reviews. It is then reviewed by the field office chief division counsel, the ASAC, and, finally, the SAC. After all levels have approved the initial application, the package is pushed electronically to the National Security Law Branch (NSLB) and the headquarters “substantive desk” responsible for the program. International terrorism cases are managed by either ITOS I or ITOS II and within these sections are specific units responsible for the management of geographic areas both CONUS and OCONUS. See Figures 1 and 2.

NSLB provides the final legal review of the application before the package is sent to the Department of Justice’s Office of Intelligence. The DOJ lawyers assigned to this office begin the process of creating the application for presentation to the Foreign Intelligence Surveillance Court (FISC) for a hearing.

Once sent to the DOJ, Office of Intelligence (OI) lawyers communicate directly with field office agents, as well as the substantive desk supervisor who is ultimately responsible for taking the case to the FISC and swearing to its accuracy. This process can be a lengthy one and is dependent upon many factors. Each FISA application is designated a “Tier” to ensure the most urgent requests are dealt with in the most timely manner. Emergency applications, or “EA’s” as they are commonly known, can be approved almost immediately under extraordinary circumstances first by the FBI Director and then by the Attorney General or another official of the executive branch so authorized by the president. Typically, these designees are the Deputy Attorney General, the National Security Advisor, the Director of National Intelligence, or the Director of the Central Intelligence Agency. Once an EA is approved, the FBI and DOJ must present a completed FISA application to the FISC within 72 hours or must terminate the surveillance. If the FISC does not concur with the emergency authorization intercept, it will order the termination of the surveillance and can order the FBI to inform the subject that he or she was the subject of such intercept. Although this likelihood is extremely rare, it ensures that all levels of government adhere to the strictest of measures when seeking the most intrusive techniques at the FBI’s disposal.

In normal circumstances, however, it takes considerable time to complete a package. Once satisfied, all parties sign the application and accuracy forms and the case is presented to the court by the FBIHQ supervisory special agent and the DOJ OI attorney. The FISC is made up of seven judges appointed by the Chief Justice of the Supreme Court. Each judge serves for a staggered, seven-year term and is selected from a separate U.S. Judicial District.

In much the same way cases are presented in federal court, the government states its case against the subject, in the case that the subject is a foreign power or acting as an *agent* of a foreign power. In so doing, the government requests authority to conduct a specific type of electronic surveillance or searches requested by the FBI and the court can either approve or deny the application. The government has been very attentive to the requirements set forth in the FISA statute and guidance provided by the FISC. According

to the annual memorandum to Congress regarding the use of FISA to collect foreign intelligence, in 2007 the government made 2,371 applications for electronic surveillance, electronic surveillance combined with physical searches, or simply physical searches. Of these, the FISC approved 2370. The FISC made “substantive changes” to the government’s proposed orders in 86 FISA packages before authorizing them.³⁵

3. FBI and the United States Attorney’s Office

This ability to collect electronic surveillance as part of an intelligence or other national security investigation is only half the formula for executing the role of both an intelligence and law enforcement agency. Many domestic intelligence agencies can collect information, but to be able to turn that collection into evidence requires another key linkage that has existed within the FBI since its inception—the United States Attorney.

In most circumstances, the FBI conducts investigations in coordination with the United States Attorney’s Office (USAO). Each USAO has line attorneys assigned to address the prosecutorial needs of the FBI’s national security investigations. Agents meet with these attorneys to chart a course for the investigations provided the ultimate goal of the case is a disruption by arrest and prosecution. This early coordination is important in the maturation of the investigation because jointly the agents and attorneys can collaborate to determine what collection must be used or furthered in order to present a successful prosecution.

Once sufficient intelligence has been collected, the FBI and the USAO seek “Attorney General Use Authority” for each piece of intelligence collected under FISA before it can be used in court. This ensures the methods used were conducted under appropriate legal authority and that the disclosure of the collection in federal court does not damage the long-term collection strategies of the United States.

³⁵ Brian Benczkowski, letter to Nancy Pelosi, April 30, 2008, Federal of American Scientists, <http://www.fas.org/irp/agency/doj/fisa/2007rept.pdf> (accessed February 21, 2009).

After obtaining “use authority,” the case proceeds in much the same way as any other federal case—through the use of indictments, arrests, and trials in U.S. District Court. This ability to collaborate with the USAO independent of a separate law enforcement organization and use the intelligence collected “in house” is much different than other domestic intelligence or law enforcement agencies used by foreign governments. Most governments with “stand alone” domestic intelligences agencies must work with a sponsoring law enforcement agency which often times is not aware of even the existence of a case before it is advised of it near the conclusion of the investigation. This usually occurs when the domestic intelligence agency sees arrest and prosecution as the best option to disrupt a terror plot or foreign intelligence intrusion.

This process of using a “sponsoring” law enforcement agency to conduct an arrest of a subject based on another agency’s collection and then require that same law enforcement agency to sift through the intelligence collected in hopes of presenting evidence for prosecution is inefficient. Foreign domestic intelligence agencies are creating workaround models such as assigning law enforcement officers to their offices in a task force capacity, but at the end of the day, these officers belong to another agency and they cannot replicate the roles of an agency like the FBI whose assets are totally organic.

Equally important to the long-term success of the FBI is that each agent is educated in the role of the USAO and legal framework that surrounds a case bound for prosecution. Agents assigned to work criminal matters can be reassigned to national security squads as investigative methods and the legal requirements needed to take a case to court are no different than what they have been accustomed to in their careers as criminal agents. While they will have to adhere to new internal requirements placed upon agents conducting terrorism and intelligence investigations, the “guts” of the investigative process is the same. This also assists leaders in cross-training personnel and refreshes investigative strategies by ensuring imaginative methods of casework are brought to bear by squads which may be more accustomed to a slower, long-term style of investigation.

Unfortunately, the United States has been forced to weigh the differences of employing military, intelligence, or investigative actions against an enemy. In the fall of 1998, the National Security Council held discussions concerning Usama bin Laden and whether he was the target of military action or the subject of a legal process. Bin Laden had been identified as the mastermind of the East Africa Embassy bombings in Dar es Salaam, Tanzania, and Nairobi, Kenya. When asked about the outcome of this decision, Madeline Albright, then U.S. Secretary of State, said, “We decided it was both.”³⁶ Further, William Cohen, then U.S. Secretary of Defense, said forcing to decide between whether bin Laden was a military target or a law enforcement one was a “false choice” and stated that all instruments of American power should be brought to bear simultaneously.³⁷

Much the same argument can be made when considering a separation between the law enforcement and intelligence collection functions of the FBI. The elimination of one of these elements may result in the creation of a much more cumbersome, less nimble, and more divisive government strategy in combating terrorism and hostile intelligence collection agents targeting the United States.

B. OVERSEAS PLOTTING AND THREATS TO THE UNITED STATES

One of the primary functions of the FBI’s International Terrorism Operations Section II, is developing cooperative liaison with the counterterrorism divisions of foreign law enforcement and intelligence agencies. The FBI does this through two specific units, Extraterritorial Investigations Unit I and II. These units consult daily with foreign partners unilaterally through local liaison in Washington, D.C. and through the legal attaché offices embedded within the U.S. Embassies abroad. These “legats” work directly with the foreign services on issues of joint concern and ensure the seamless and timely passage of terrorism-related information across the agencies. This coordination, especially on law enforcement to law enforcement levels, is not replicated by any other

³⁶ Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan, and Bin Laden, from the Soviet Invasion to September 10, 2001*, 2nd ed., (New York: Penguin, 2005).

³⁷ Ibid.

agency within the United States government (USG) and is critical to the success of combating the terrorist threat abroad and to keep it from coming to the United States.

Highlighting the concern about threats to the United States being launched from foreign soil, Former Secretary Michael Chertoff of the Department of Homeland Security said recently that “One of the things we have become concerned about lately is the possibility of Europe becoming a platform for a threat against the United States.” He added, “We have watched the rise of home-grown terrorism,” citing the Madrid train bombing in March 2004 and recent foiled plots in Britain and Germany, “that suggests to us that the terrorists are increasingly looking to Europe both as a target and as a platform for terrorist attacks.”³⁸

To this end, the FBI has partnered with the Department of Defense in Iraq and Afghanistan to conduct the investigation of CONUS-based threats to that reveals a nexus to the homeland. By co-locating with DOD partners in active theaters of conflict, it enables the agency to provide near real time threat information obtained from the battlefield to FBIHQ and impacted field offices as well as our foreign partners if necessary. This information could come from a foreign fighter network or through the exploitation of media or documents removed from enemy targets or personnel. Given the urgency and reality of the threat looming from the Federally Administered Tribal Areas (FATA) within Pakistan and the threat this poses to Europe and to the United States, the FBI remains uniquely positioned to combat this threat both as a force multiplier with DOD elements in Afghanistan and with their legal attaché offices in Kabul, Afghanistan and Islamabad, Pakistan.

There are no other agencies within the United States that are organized both domestically and abroad to address the threat from the FATA and from western operatives based in Europe. Given a recent GAO report which states, “The United States has not met its national security goals to destroy the terrorist threat and close the safe

³⁸ Kate Kelland, “Chertoff says Europe Poses Terrorism Threat U.S.,” *Reuters*, January 16, 2008, <http://www.reuters.com/article/domesticNews/idUSL1623585820080116?feedType=RSS&feedName=domesticNews&rpc=22&sp=true> (accessed May 18, 2008).

haven in Pakistan's FATA region," it is unlikely that the creation of another domestic intelligence agency would be positioned to address this threat.³⁹

1. Origins of the Current Threat

Transformation is never easy. It is much less so when an agency embracing transformation is also effectively engaged in detecting and defeating the multitude of threats that face the United States. And while the threat of terrorism prior to September 11, 2001 was largely ephemeral to most of the American public, dedicated servants within the FBI, the CIA, and other national security organizations were beginning to guess at what the future held. A majority of Americans and most politicians believed terrorism was the creation and resultant scourge of the third world and could not be exported to the United States in the manner which manifested itself on that crystalline-blue, late summer day. But for those who understood the menacing threat growing in the east, taking shape in the form of a amorphous and loosely affiliated group, their voices were too few to convince governmental leadership to address the threat in a proactive manner.

Nevertheless, as surely as Americans and much of the government misunderstood the dangers, the terrorists, too, underestimated and misread the reaction of the United States government to the attacks of 9/11. It is likely that the leadership within core Al-Qa'ida thought the attacks would hurtle the United States into paralysis and inaction, and there is some evidence which may have led them to this conclusion. The fear of future attacks by Al Qa'ida and like-minded groups did lead to the most significant era of government restructuring since the changes implemented as a result of the National Security Act of 1947.

The face of what is called "modern terrorism" has roots which are decades old. The teachings of the Egyptian Syed Qutb in his 1964 book *Milestones* had great influence

³⁹ Government Accountability Office, "Combating Terrorism: The United States Lacks Comprehensive Plan to Destroy the Terrorist Threat and Close the Safe Haven in Pakistan's Federally Administered Tribal Areas," U.S. House of Representatives Committee on Foreign Affairs (2008), <http://www.hcfa.house.gov/110/GAO041708.pdf> (accessed May 18, 2008).

on Ayman al-Zawahiri, another Egyptian who is largely thought of as the theocratic center of al-Qa'ida, who assisted Usama bin Laden in the writing and issuance of Fatwa's (or Islamic Religious Orders) from their mountain hideaways within the Federally Administered Tribal Areas in Pakistan. Qutb himself was borne out of the same beliefs that created the Muslim Brotherhood, a popular, albeit underground, Islamic fundamentalist movement centered, not accidentally, in Egypt.

The ideas which Qutb and his ilk proselytized focused on a reformation, of sorts, of the Islamic faith—a rebuilding of the pillars of Islam and an adherence to fundamentalist teachings, all in an effort to restore the luster of Islamic culture to that of its ancient past. Unfortunately, this sort of reformation typically results in a separation of cultures and a rebuff of modernity which only produces a culture that falls further behind its less theocratic neighbors. This reversal of progress creates a divide composed largely of “have” and “have-nots” exacerbating an already present sense of disenfranchisement, anger, and, finally, violence toward those believed to be responsible for their plight. While this may be an oversimplification of a longer process that leads to the subornation of terrorist ideologies, it illustrates the path which leads terrorists to use fear to achieve their military, political, and ideological objectives, which under the banner of fundamentalist Islam cannot be separated.

Usama bin Laden was one of many sons and daughters born to a Saudi Construction magnate who, after a formal education, left the Arabian Peninsula to support and “fight” against the Soviet Union in Afghanistan. Personally rich as a result of his father’s good fortune to be well-liked (and well compensated by the Royal Saudi family), bin Laden set off for Afghanistan in the late 1980s to do what he could (mostly financially) for the mujahidin fighting their guerilla war against the Soviet forces supporting the Communist government in Kabul.

Bin Laden received some notoriety as a supporter and leader of the mujahidin, but his financial assets made him a popular figure among the mujahidin. In addition, bin Laden’s financial assistance, while noticeable on a local level and with certain non-Arab

groups, was only pittance compared to the support provided to Afghanistan resistance leaders by the United States Central Intelligence Agency and Saudi government via Pakistan's Intelligence apparatus (ISI).

After a highly publicized defeat of the Soviets by the mujahidin, an emboldened bin Laden returned to his homeland of Saudi Arabia as a self-styled conquering hero, but this stature was short-lived. After Saddam Hussein "blitzkrieged" through Kuwait in 1990, bin Laden offered to raise a mujahidin army to defend the Saudi Peninsula from Iraq. The Saudi Royal family repeatedly turned down their native son's repeated offers of assistance in favor of the U.S. military, which infuriated and humiliated bin Laden. His anti-Saud family rants led him to Sudan and ultimately caused the Saudi government to revoke his citizenship.

An increasingly bitter bin Laden saw the United States and its western allies as the chosen champion over him to defend his own homeland, and it was this perceived injustice which fed into his own burgeoning Islamist views to create a potent terrorist spark which fully ignited when set to the tender which was the Dr. Ayman al-Zawahiri. This combination of wealth, anger, and fundamentalist doctrine gave birth to al-Qa'ida, an organization bent on the use of terror to sate its rage and fulfill its "divine" objectives.

The use of fear was clearly evident in al-Qa'ida's "coming out" declaration written as a fatwa in 1996. This fatwa articulated goals for the organization, not the least of which was a declaration of a war against the west, which went largely unheeded by the United States, and a demand to the United States to pull out all troops from Islamic Holy Lands, especially Saudi Arabia. At the time, the United States maintained a sizable force at bases on the Saudi Peninsula in order to enforce the Iraqi "No-Fly Zone" in northern and southern Iraq after the Gulf War.

Bin Laden witnessed the success of guerilla tactics and the fear they inspired in the hearts of Soviet tank crewmen in the passes of Afghanistan; he thought similar tactics would work against the United States. Technologically, militarily, and numerically inferior, bin Laden recognized the very real need to embrace guerilla tactics and fear as a tool in the war against the west. By striking soft and hard-to-defend civilian targets, bin

Laden believed he would invoke the same helpless fear the mechanized Soviet forces felt as they battled a more fluid, deceptive, and agile force in the Panshir Valley of Afghanistan.

In August of 1998, bin Laden and his surrogates in Kenya and Tanzania struck the embassies of the United States in Nairobi and Dar es Salaam, respectively. These near simultaneous actions killed hundreds of people, mostly Muslim. These attacks ushered in the age of al-Qa'ida and bin Laden's control of the organization. The U.S. response to this attack was muddled, ineffective, and untimely which further emboldened bin Laden's belief that his campaign of fear would have the effect he desired, which was compliance with his 1996 fatwa.

Even though diplomatic pressure was being brought against the Sudan to expel bin Laden and turn him over to the United States, bin Laden was already planning his next act that culminated in the attack against the USS *Cole* in the Port of Aden, Yemen in late October of 2000. When a skiff loaded with explosive rammed the U.S. destroyer as it was being refueled in Aden's Harbor killing 17 U.S. sailors and wounding many more, the FBI and CIA were already painfully aware of a near-crippling communication problem between the agencies. Again, bin Laden was clearly emboldened by the U.S. reaction to this direct attack on the American military. In fact, there was no response at all. It is clear this lack of a military response coupled with the ineffective counterattack to the U.S. Embassy bombings two years prior was pivotal in bin Laden's thinking. So much so, that as the USS *Cole* limped back to the United States on the back of a giant Dutch sea-hauler, bin Laden began commiserating with another Islamist opportunist named Khalid Sheikh Mohammed (KSM) to conduct the most horrific attack on U.S. soil since Pearl Harbor.

By 2001, bin Laden had long since departed an increasingly hostile Sudan for the safer climes of Afghanistan, entertaining his family and a series of guests that included Saudi diplomats and Arab princess.⁴⁰ From his headquarters at Tarnak Farms in the

⁴⁰ Coll, *Ghost Wars*.

Kandahar Province, bin Laden authorized KSM to begin the planning process for the attacks of 9/11, the seeds of which had been sown seven years earlier during his nephew's attempted destruction of the World Trade Center in February 1993. FBI investigation revealed Ramzi Yousef and several others conspired to topple one tower into another by detonating a truck bomb in the subterranean parking garage of the North Tower. This plot was largely unsuccessful, but nevertheless resulted in the death of six Americans and the wounding of hundreds of others.⁴¹

As the plans to conduct the attacks on 9/11 moved forward, each of the players was being personally and psychologically inspired by the inaction of the United States to threaten their safe havens. The strikes against suspected Al-Qaida elements in the Sudan in August 1998 as reprisals for the near simultaneous bombings of the U.S. Embassies in East Africa proved ineffective and may have served to further embolden bin Laden. This relative inaction was further exacerbated by an acrimonious change of Presidential power from President William J. Clinton to President George W. Bush.

September 11, 2001 arrived largely unchallenged, and the disastrous consequences of inaction and evil resulted in the deaths of more than 2,900 Americans. That day serves an important lesson insofar that directed terrorist actions left unchallenged will continually be revisited upon those who have not answered them. This is reminiscent of lessons learned (or in this case not learned) from an old Bedouin tale:

A Bedouin Chieftain was alerted one day to the theft of some chickens from his stock. He ordered his two sons to find and bring to him his chickens and the person responsible for this crime as he knew, as a wise Chieftain, that the theft, left unchallenged, would be his ruin. His sons searched (one assumes half-heartedly) for the thief, but returned to their father without the culprit. The father chastising his sons harshly sent his sons away.

Days later the Chieftain was again notified that he had been the victim of theft, this time of several camels. He again called for his sons and told his sons to go forth and find not his camels, but his chickens. Confused, his

⁴¹ Laurie Mylroie, "The World Trade Center Bomb: Who is Ramzi Yousef? And Why It Matters," *The National Interest* (Winter, 1995/96), <http://www.fas.org/irp/world/iraq/956-tni.htm/> (accessed March 1, 2009).

sons went out and thinking they should look for both, found neither and return ashamedly to their father. The chieftain berated his son's lack of diligence and sent them away again.

Finally, the Chieftain was awoken by a messenger alerting him that his daughter had been raped and murdered. He brought his sons to his tent again and said "it has come to this: my daughter and your sister is dead because you could not find my chickens."⁴²

This tale tells one that if the United States had reacted appropriately in 1993, or in 1998, or in 2000, then the destruction wrought by 9/11 could have been averted. Unfortunately, relative inaction led the U.S. to, on a national level, what the Bedouin chieftain experienced in the raping and murder of his daughter. Terrorism unchallenged ushers in more of it and a greater belief by those conducting it, that theirs is the right tactic to achieve their objectives.

C. DOMESTIC INTELLIGENCE AGENCIES ABROAD

How might the FBI adopt or adapt methodologies used by other agencies in countries that have been targets of terrorist actions? When discussing the possibility of establishing a domestic intelligence agency for the United States or modifying current process by existing agencies, the first thought is to examine the effectiveness of these agencies in countries such as Canada, the United Kingdom, Australia, Spain, and even India. Of these models, which has been most effective in preventing terrorist attack? Which model is more consistently able to provide courtroom admissible evidence to a law enforcement agency to further the investigation, conduct the arrest, and present the case to their justice departments for prosecution? The data within each country is mixed and presents no real evidence that a domestic intelligence agency is more effective than the FBI.⁴³ In fact, if numbers of terrorist acts which have occurred in these countries

⁴² The author attempted to locate the author of the tale for proper attribution, but was unable to do so.

⁴³ Richard Posner and Juliette Kayyem, "Does the United States Need a Domestic Intelligence Agency?" *Online Debate*, Council on Foreign Relations, November 17, 2006, http://www.cfr.org/publication/11990/does_the_united_states_need_a_domestic_intelligence_agency.html (accessed March 6, 2008).

since September 11, 2001 is an indicator of success or deterrence, then an argument could be made that these agencies are less effective in the prevention of terrorism than a hybrid agency such as the FBI.

1. The MI-5 Model

MI-5 was formed in 1909 (one year after the United States formed the Federal Bureau of Investigation) as an agency dedicated primarily to the counterespionage mission. With communism on the rise, the agency became fully engaged in the business of catching spies and focused little on counterterrorism until the 1970s when MI-5 began combating terrorism in Northern Ireland.⁴⁴ This acquisition of additional responsibilities is not unlike the FBI's experiences in adapting to meet the challenges of new threats which is a discussion for a later chapter.

Unlike the FBI, MI-5 has no powers of arrest, rather they collect intelligence and hand it over to the police (police departments such as New Scotland Yard, Greater Manchester, etc.) in order for those agencies to open parallel investigations, collect evidence, conduct arrests, and present the evidence in court. MI-5 also does not arm its officers, nor do they use any form of plea bargaining except during the sentencing phase of trial. It would be inaccurate to say MI-5 does not allow its officers to testify in trial — it does have a small cadre of individuals that assist the police and prosecutors in testimony, especially on the technical aspects of their collection.

The role of the service today is to protect the national security and economic well-being of the United Kingdom and to support the efforts of law enforcement agencies in preventing and detecting serious crime. According to Mr. Paul Smith, the agency has six primary objectives:

1. To frustrate terrorism—both internationally and domestically (counterterrorism)

⁴⁴ Paul Smith, “MI-5 / Domestic Intelligence for the United States Discussion,” (classroom discussion, Naval Postgraduate School, Monterey, CA, June 9, 2008).

2. To prevent foreign intelligence operations and other foreign state activities from damaging the UK's national security interests and economic well-being (counterintelligence / counterespionage)
3. To frustrate procurement by proliferating countries of materiel, technology, or expertise related to weapons of mass destruction (counter-proliferation)
4. To reduce crime by assisting law enforcement agencies in its efforts to prevent and detect (serious crime reduction)
5. To protect the confidentiality, integrity, and availability of government information and assets and the effective operations of the critical infrastructure (protective security). The service does this by utilizing what they coined as the ‘Four P’s’
 - Prepare
 - Protect
 - Prevent (Counter-radicalization)
 - Pursue
6. To identify, provide warning, and counter new or re-emerging threats such as subversion⁴⁵

a. The Desk Officer

MI-5 is built around the “desk officer” concept, which is constituted by a cadre well-educated, young, and highly motivated officers who totally control the collection processes against specific targets. These desk officers, along with the “Special Branch” within each police department, generate ideas on how to attack a target — whether to utilize human assets or technical coverage.

When discussing counterterrorism specifically, MI-5 recognizes four types of CT investigations:

- The Long Running Intelligence Investigation
- The Hot Tip

⁴⁵ Paul Smith, “MI-5 / Domestic Intelligence for the United States Discussion.”

- The Post Attack
- The Fluke⁴⁶

The chart below (Figure 3) is a visualization of the desk officer concept as described by Mr. Paul Smith and the methods by which the desk officer receives information and provides taskings to the field for further collection against a target:

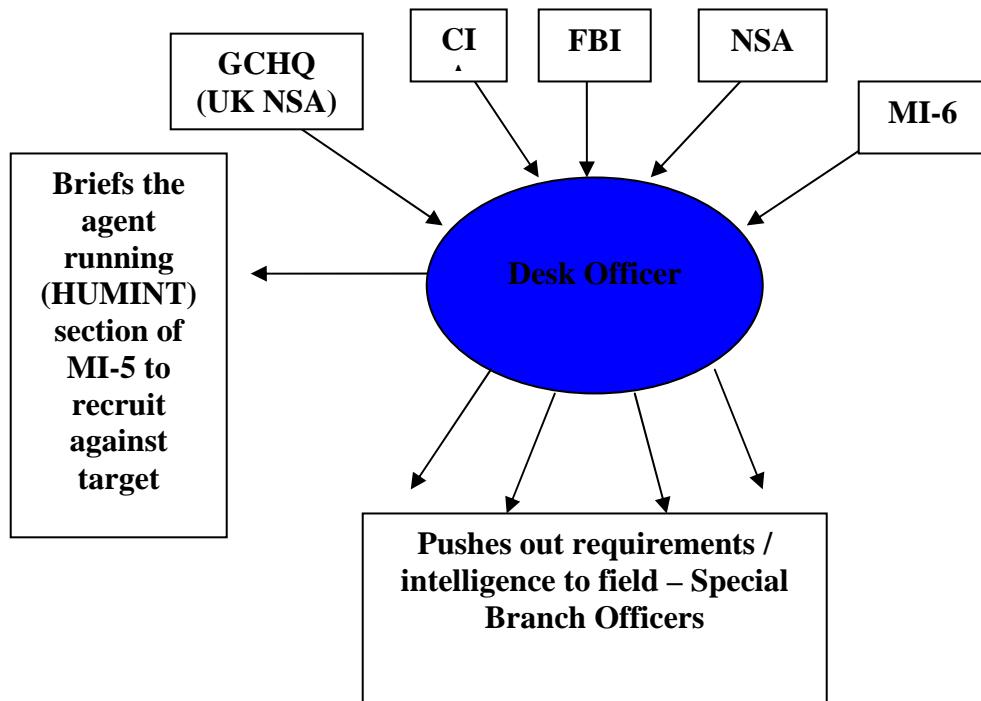


Figure 3. Desk Officer Concept

MI-5 uses several methods to conduct investigations which are not unlike those undertaken by intelligence or law enforcement organizations. Placement of assets (HUMINT), surveillance, interception, liaison, data mining, and eavesdropping through electronic and mechanical surveillance systems all have their place within the MI-5 investigative framework.⁴⁷

⁴⁶ Paul Smith, "MI-5 / Domestic Intelligence for the United States Discussion."

⁴⁷ Ibid.

With respect to electronic surveillance, and unlike the laws protecting U.S. persons against unwarranted eavesdropping in the United States, MI-5 needs only *suspicion* to implement collection against a target and does not take the collection request to a judge or magistrate, but rather to the Home Secretary who reviews and authorizes the surveillance package. In the United States, the FBI must show the target is “an agent of a foreign power” (terrorist), demonstrating this through a lengthy application which must be sworn before the Foreign Intelligence Surveillance Court (FISC) by an FBI supervisory special agent. These court orders (if granted) are good for a period (typically) of 90 days for U.S. persons (USPERS) and up to six months for non USPERS. MI-5’s requests are subject to judicial review every six months by their High Court Judge to ensure accuracy and necessity.⁴⁸

MI-5 and a law enforcement agency with jurisdiction conduct what they call a “dual track” investigation: MI-5 works the intelligence collection portion of the case and the law enforcement agency (such as New Scotland Yard) works the criminal aspects of the case. During an arrest or subject interview situation, the MI-5 desk officer in charge of collection against the specific target would deploy to the interview location to assist the interview team during the interrogation. In instances such as this and if the potential for prosecution exists, New Scotland Yard (NSY) would be responsible for taking the criminal case to court.⁴⁹

The agency is broken down into thirds: operations, policy, and finance. In terms of size, MI-5 is a relatively small organization with approximately 3,500 individuals in the service, 55 percent of which are under the age of 40, with the agency evenly split between men and women.⁵⁰ With respect to oversight, MI-5 is reviewed by

⁴⁸ Paul Smith, “MI-5 / Domestic Intelligence for the United States Discussion.”

⁴⁹ Ibid.

⁵⁰ Ibid.

legal and judicial bodies (such as the surveillance applications by the high court judge every six months), by Ministerial review, during the surveillance request process, through Parliamentary policy, and through Treasury audits.⁵¹

One of the most striking differences between the MI-5 model and the FBI is the lack of required predication with regard to surveillance requests on UK subjects. It is unlikely the U.S. Congress would craft legislation creating an agency whose capabilities would include the authority to conduct relatively unfettered surveillance based on nothing more than suspicion. The other primary difference is in the necessity for MI-5 to have a law enforcement agency “sponsor” to take criminal actions to court. The FBI is a hybrid agency capable of collecting intelligence and taking the evidentiary aspects of that collection to court on its own. In instances where intelligence and/or evidence is collected through sensitive techniques, the FBI seeks Attorney General “Use Authority,” which allows such evidence to be used in open court. Obviously, like MI-5, the FBI must weigh the benefits of such use especially in terms of exposing sensitive techniques to prosecute the subject of said surveillance.

2. The British Experience in Northern Ireland

In the fascinating article written by Matthew Teague for the April 2006 edition of *The Atlantic Monthly*, the author presents a model for collecting and disrupting an organization. In this case, the British infiltrated the Irish Republican Army (IRA), exploited its weaknesses, and sowed the seeds of mistrust among its members. The extraordinary aspect about this methodology was the patience, risk, and the political will needed to implement and the ruthless manner in which it was ultimately executed.⁵² The experiences of MI-5 in Northern Ireland provide certain lessons and cautionary tales for the United States, the most important of which is how or whether the U.S. should employ these techniques, tactics, and procedures in our current struggle against Islamic Fascism.

⁵¹ Paul Smith, “MI-5 / Domestic Intelligence for the United States Discussion.”

⁵² Matthew Teague, “Double Blind,” *The Atlantic Monthly*, April 2006.

The British created a counterinsurgency task force called the “Force Research Unit,” dedicated to the mission of IRA infiltration through the use of undercover operatives, bribery, and, subsequent to this, covert assets. Through this trident of techniques, the British were able to create mistrust between IRA members and dissolve their ability to depend on one another as each feared the other was a British Operative or they themselves might be wrongly (or accurately in some cases) labeled as a British spy and killed for it.

For years the British provided funds to sources and undercover agents (UCA’s) who were woven so deeply within the IRA they were actually involved in some of the most violent tactics the group could execute — many times with the knowledge of the handlers who were paying them. The British believed that by doing this, the UCA’s and assets who performed these actions (Fulton was a bomb-maker and Scapaticci was a ruthless enforcer) could get an increasingly better optic on the organization and could provide more prescient intelligence to their handlers — always toward the ultimate goal of dismantling the IRA.⁵³

What separates British actions in Northern Ireland and counter terror operations in the United States is the brazenness of the British government’s decision to invest in this sort of long-term penetration and doing so despite the risks to British civilian life. Much can be learned through their decision to take the long-view in this struggle and employing the tactics they authorized with the understanding that while the short-term tactical risks were many, the potential results for taking these risks would be the internal destruction of the IRA.

The British conduct of this counterinsurgency differs from our own government’s prosecution of the war on terror in many ways. The United States government will never support such actions, nor is it likely willing to risk the lives of innocent civilians (even relatively controlled risk) to seek some greater victory in the future. This unwillingness to accept risk for long-term gain is understandable, but it is also crippling. To fight an

⁵³ Timothy Lavin, “From Belfast with Love,” *The Atlantic Monthly* March 7, 2006, <http://www.theatlantic.com/doc/200603u/stakeknife> (accessed October 27, 2007).

increasingly deadly enemy, the nation must be able to accept risk by employing tactics which allows UCA's to “buy” credibility within their respective cells or subordinate units within the larger organization. However, to employ such tactics, there must be a greater investment in fully training undercover operatives to be more technically and tactically savvy in order to defeat the checks which are placed on them by their respective terrorist organization. By checks, this author suggests that terrorist organizations routinely vet the information and actions taken by their members to ensure loyalty and lethality. This vetting process is similar to the process the USG uses to ensure the reliability and access of embedded assets.

3. A Culture Devoid of Risk

In the early years of the Cold War, intelligence organizations managed risk, but did so using a much different leadership prism than the one that was used in the decade prior to September 11, 2001. This prism was forged through the fire of the exploits perpetrated by the special operations soldiers, the FBI's own intelligence agents, and members of the Office of Strategic Services (OSS) who parachuted behind enemy lines to foment disarray and encourage underground resistance movements. It was also forged through leaders who understood the sacrifices that were required to win the long, dark struggle of major conflict.

Unfortunately, the political situation dictated the times and that prism was put away after the fall of the Communist Bloc, and by the early 1990s the United States began to withdraw from daring exploits and began to focus more on the nation's burgeoning technical prowess to gauge the intent of U.S. enemies. And while America's major antagonist dissolved, many more were born into existence as the firm hand of Communism loosed its grip upon the controls of many third-world nations. It was during this time human collectors should have been unleashed upon the disparate, but increasingly deadly organizations emerging across the globe.

Exactly the opposite happened. The U.S. went into a shell of complacency, believing (wrongly) the world was a safer place and its technical capabilities, such as

signals and imagery intelligence, could provide all the answers it needed to protect its borders and interests abroad. In fact, the Clinton administration acting on this belief instituted a policy, called the Torricelli Principle, essentially prohibiting the Central Intelligence Agency from recruiting and utilizing assets and informants with a record of criminal wrongdoing or civil rights abuses.⁵⁴ This policy unduly restricted the U.S. government's intelligence agencies in recruiting assets with access to information which could have protected it against attack, and, what is worse, created an investigative and intelligence collection culture devoid of risk taking and imagination—both of which proved devastating in the years leading up to 9/11.

The British, on the other hand, were still embroiled in their struggle against a deadly insurgency but were beginning to see gains from their employment of dangerous, cleverly repetitive, and patient undercover operations. Operations, that were they to be exposed, would cause catastrophic damage to the parallel, albeit largely ineffective, peace process ongoing with Northern Ireland.

The gamble in Northern Ireland worked; in September 2005, the IRA disbanded its armed struggle against British rule and began to get behind the political process led by Jerry Adams' Sinn Fein. As Timothy Lavin writes, "The disarmament was a response to many things — progress made by its political wing, Sinn Fein; slackening of American funds after 9/11; and the many reforms triggered by the Good Friday Agreement in 1998, to name a few. But even as all these events unfolded publicly, in the shadows a devastating cancer had metastasized within the IRA's leadership."⁵⁵ This cancer was the bold emplacement of British agents within the IRA — agents so deeply embedded within the organization that they participated in nearly all aspects of the organization's efforts to rid British influence from Northern Ireland. By conducting these actions shoulder to shoulder with other members, they were inherently trusted, but during it all, they were reporting, targeting, and removing the heart of the organization from within.

⁵⁴ Paul Mulshine, "Torricelli Principle' Ties CIA Agents' Hands," posted on September 13, 2001, Free Republic, <http://www.freerepublic.com/focus/f-news/522426/posts> (accessed October 27, 2007).

⁵⁵ Lavin, "From Belfast with Love."

4. 9/11 Forces a New Paradigm

The attacks against the United States on September 11, 2001 finally forced into the American conscience the insidious goals of Islamic Fascism even though many countries had been targeted for over a decade by terrorist organizations. Americans have largely forgotten Beirut in 1983, World Trade Center I in 1993, the Manila Air Plot of the mid 1990s, and Khobar Towers and East Africa Embassy Bombings of 1996 and 1998, respectively. And while there are no positives worth the death of nearly 3000 innocent lives, the attacks and future threats have forced our government into researching the feasibility of using a new operational paradigm in this war against terrorism. As such, the U.S. government is contemplating for the first time in decades, the use of riskier undercover operations with unsure results — operations that cost political capital as well as real capital for the purposes of creating an undercover capacity similar to what was used by the British so expertly in their fight against the IRA.

In the short term at least, U.S. leaders have become more amenable to conducting actions which have led to an offensive posture in efforts against terrorist organizations. The overt actions are well known: The deployment of U.S. forces in two theaters, Afghanistan and Iraq, the demonstrated efforts of the Treasury Department in identifying and freezing assets owned or even “touched” by terror groups, and the government’s non-distinction between terrorists and those who harbor them.

The CIA and FBI have both recognized the need to increase their respective abilities to collect using human assets. This human intelligence capability is the first step in building a network of agents and assets with the skills necessary to infiltrate and report on terror groups.

Additionally, the arguments which started immediately after 9/11 and which were featured prominently in the 9/11 Commission hearings with respect to “The Wall” prohibiting intelligence sharing between intelligence and criminal divisions of the FBI, illustrates how far the pendulum had swung and how far back it needed to go in order for the nation to regain its collective grip on the new threats it was facing. Over seven years

have passed since 9/11, few if any, have suggested this wall needs to be rebuilt. While eliminating the wall may seem a subtle change for most to the way the FBI operated prior to 9/11, it has impacted in major way how the FBI investigates and prosecutes terrorist cases.

Within this construct, it is the investigation of these cases that shows the greatest sea change within this new template. Prior to 9/11 and even for several years afterward, the FBI was culturally averse to allowing investigations to linger if a threat was implied. This was a direct result of two things: 1) in the years just prior to 9/11 the nation was lulled into a complacency which created a political environment which disallowed creative, but potentially risky, investigations; and 2) immediately after 9/11, the FBI, in particular, and the USG writ large were so totally focused on the prevention of another act that every subject of investigative interest that had verbalized threats (and where adequate evidence was obtained) was disrupted. This is not a failure on the part of leadership, but simply a reflexive reaction to the unprecedented acts perpetrated against the United States. Since that time, however, the intelligence agencies and leaders have begun to readdress the thought processes that brought the IC to this methodology and have begun to step back from the focus on disruption, giving way to an emphasis on collection.

Especially for the FBI, an organization built around the foundation of criminal investigations, arrests, and prosecutions, this new shift or paradigm embracing lengthy intelligence gathering investigations prior to a disruption or arrest is a major change in U.S. culture. This shift has dramatically changed the day-to-day operations of the FBI and is another step toward understanding the benefits of long-term collection versus the short-term victory of an arrest or disruption before true exploitation of the subject's organization could occur. This maturation process will only continue and as the public conscience becomes more aware of the forces aligned against the country, one can assume the USG is more likely to consider the very real possibility of engaging in the types of ambitious, albeit dangerously risky operations used by colleagues in the U.K.

Clearly the use of prolonged and politically charged operations will be a source of much debate by the government in the months and years to come. To paraphrase Matthew Teague when asked by Timothy Lavin whether his story about the British dismantlement of the IRA has any moral implications for the United States against its battle with the Iraqi Insurgency, Teague puts it like this:

That's the heart of this story, I think. It's about us, as much as it's about the British. I suspect that in the short-term infiltration works, in that it helps you penetrate and undermine a specific organization, whether it is the IRA or Al-Qaeda in Iraq. Long-term, the methods of penetration are so duplicitous that you create a terrible perception of yourself. For instance, the British did penetrate the IRA and they did undermine it through duplicity. But everything comes out in the end. Denis Donaldson, for instance, all of these decades later, is revealed to be a spy and it undermines all of the work that the British have done. And so it is a quandary — it really is.⁵⁶

Only time will tell how far the pendulum will swing before U.S. government actions find the right level in this war against terror. How much intrigue and violence will the nation's soul have to bear, before those actions begin to meld imperceptibly with those who the fight is against? There is a level at which the nation can strike an optimum benefit between the aspects of infiltration, collection, and exploitation without risking the loss of the primary objective which is to safeguard the American people and preserve the rights they have as citizens.

⁵⁶ Lavin, "From Belfast with Love."

IV. PROGRESS TO DATE

A. STRATEGIC EXECUTION TEAM AND INTELLIGENCE BASED DECISION MAKING

One internal criticism often heard within the FBI is that as an organization, “the FBI does not systematically use intelligence to drive decision making.”⁵⁷ This concern is being addressed by implementing what the FBI calls the “Strategic Execution Team” to train the force and establish a culture based, not coincidentally, on “Intelligence-Based Decision Making.” While not an original concept, it nonetheless underscores the bureau’s efforts to identify the threat landscape, paint the situational template of potential enemy actors, and action those threats based on a balance of intelligence collection and prosecution/neutralization.

The SET process is a key piece of transformational doctrine directing the institutional changes within the FBI. SET is an acronym used to describe a cultural shift in the FBI’s focus to create an organization capable of meeting the domestic intelligence needs of the United States in the twenty-first century.

The intelligence-based, decision-making concept likely began within the intelligence branches of the military as battlefield commanders understood early on that to be successful, there was, and remains, a paramount need for “timely and accurate intelligence and information to plan and execute operations across the continuum of operations to ensure mission accomplishment while minimizing risk.”⁵⁸ The same is true for law enforcement and intelligence organizations insofar as both types of agencies need accurate and timely intelligence to counter criminal and national security threats against the homeland. Even localized law enforcement has embraced the idea of intelligence led

⁵⁷ Federal Bureau of Investigation, “Strategic Execution Team, Version 2.0, Wave 1.1, Boots on the Ground,” (internal document, Federal Bureau of Investigations, Washington, D.C., April 21, 2008), 4.

⁵⁸ Department of the Army, *FM-34-8, Combat Commander’s Handbook on Intelligence*, (FT Huachuca, AZ: U.S. Army Intelligence Center, 1992), ii.

policing that was borne out of the military's belief that a thorough understanding of the battlefield is required to meet with and effectively destroy the enemy.

To this end, the FBI has developed a rigorous schedule to introduce the "SET" process to each of the 56 field offices around the country. These SET teams deploy to the field office and, over the course of several weeks, conduct SET training sessions first with the division leadership, then the supervisory personnel, and, finally, the agent and analytical population to educate all levels on the shift the FBI is taking to focus resources on the threats that face the United States in the twenty-first century.

B. THE MILITARY: A TEMPLATE FOR TRANSFORMATIONAL CHANGE?

One of the fundamental processes designed to ensure the FBI is changing its historical "reactive" criminal focus to a more "predictive" intelligence driven organization is by implementing a "Domain Awareness" campaign.

1. Predictive Intelligence—A Military Lesson

The domain awareness concept is a process whereby each field office conducts a thorough examination of its territory similar to what the United States Army calls "intelligence preparation of the battlefield" or IPB. This domain awareness process will be used to understand how current threats (sometimes in the form of pending cases), coupled with demographics, intelligence collection requirements, and emerging threats blend together to form a complete picture of the "domain" in order to position investigative resources to counter the threats and produce a "predictive intelligence" capability to better safeguard the homeland. The domain roughly equals what the U.S. Army intelligence officers refer to as the "enemy situation," which provides them and their combatant commanders an illustrative view of where the threats exist and how best to align friendly forces on the battlefield to defeat them.

Unfortunately, establishing the existence and likely location of the threat is only half the issue. The FBI must now develop a predicitve capability to understand how

these enemy forces will act—what course of action will they take against the United States, and how will the FBI use this predictive intelligence to defeat the threat before the act occurs.

A predictive intelligence capability starts with intelligence preparation of the field division's territory (domain awareness) and then shifts into the realm of understanding the doctrine by which the enemy, in this case, terrorist groups and criminal enterprises, traditionally use to perpetrate their acts. Admittedly, the FBI has not been strong in developing doctrine for groups which they have investigated, but relied rather on a culture of tribal wisdom passed down from case agent to case agent. While this has proven effective in the fight against more traditional crimes, it is not a suitable way to address the deadly threats currently faced by the United States.

The FBI must establish a doctrinal, albeit malleable, template, similar to those used by the U.S. Military, for the enemies faced by the United States today. This template has proven to be successful time and again when used by military intelligence officers who use their knowledge of enemy doctrine to predict how the enemy will fight on the battlefield and how friendly forces and terrain can be used to exploit weaknesses. The enemy doctrine must then be layered over the territory to more fully understand the constraints terrain, weather, and, finally, friendly forces will have on the way the enemy chooses to fight. From this layering of doctrine, intelligence preparation of the battlefield (domain awareness), and enemy capabilities (or what the military calls “Order of Battle”), terrain, weather, and, finally, friendly force capabilities, comes the prediction of enemy courses of action (COA).

These predictive COAs emerged through a deliberate planning process and thorough understanding of the enemy. From these COAs comes a process called “course of action analysis” whereby the intelligence officer names each COA as “Least Likely,” “Most Likely,” or “Most Dangerous.” The intelligence officer briefs the combatant commander on why he or she chose them in that way and defends his or her position based on the planning process conducted to that point. The commander can then choose

to accept the intelligence officer's analysis or can modify it based on experience and then array friendly forces in a way that effectively exploits the enemy's weaknesses for greatest impact.

The FBI also must develop doctrine for terrorist groups and use that doctrinal template in conjunction with the steps listed above to confront the enemy using predictive methods as opposed to reacting to an act and finding clues to arrest the perpetrator after the damage is done. SET is attempting to make the case that the FBI will use intelligence to do just that although little has been said to date about the use of doctrine to support this effort. Time will tell whether the FBI will see the utility in creating doctrinal templates of enemy capabilities and tactics so that the agents and analysts can understand how to confront and defeat criminal and terrorist enterprises.

2. Military Transformation as a Roadmap for Success

This thesis speaks of the FBI's development into a domestic intelligence organization as a "transformation." The term transformation is used to describe a major change in organizational philosophy and a commitment to conducting operations, change that the FBI intends to accomplish by incorporating the strategic execution concept. But the FBI is far from having a monopoly on transformative processes; in fact, the FBI has never been particularly adept at wholesale major change, which, in this case, gives more credence to the use of the term transformation when describing this subtle metamorphosis.

It is impossible to discuss organizational transformation within the U.S. government and not address the challenges faced by the Department of Defense. Whether it is prompted by a need for new technologies and war-fighting equipment, changes to the historical threat landscape, or the sudden appearance of new and unprecedented dangers, the Department of Defense planners, government contractors, and private consortiums are constantly working to shape the force for conflicts both near-term and for generations ahead.

Andrew Krepinevich articulated this description of military transformation in testimony for the Senate Armed Services Committee in April 2002 when he was Executive Director of the Center for Strategic and Budgetary Assessments: Transformation can be thought of as innovation on a grand scale. Transformation is undertaken by a military that believes major changes are occurring in the character of conflict. Periods of military transformation are typically associated with a revolution in military affairs, or an RMA, in which a combination of technology, war-fighting concepts, and organizational change combine to bring about a dramatic leap in military effectiveness.

Militaries are motivated to transform most often because they conclude either that very different operational challenges are arising that will greatly reduce the effectiveness of existing forces, or because they see an opportunity to develop new forms of operations themselves that will yield great advantage in future military competitions.⁵⁹

Transformation as “innovation” is an interesting way to look at the hard problems that arise when instituting major change in an organization. By attaching the term innovation to corporate or government change, it gives the perception that an organization is abandoning the old to adapt to a new, more vital process by which the agency believes it can accomplish its mission. In the FBI’s case, simply removing the tendency to focus on a single-minded approach to investigations, which for years has been arrests, indictments, and prosecutions, in favor of a more balanced strategy of targeting, collection, exploitation, and disruption, qualifies as innovative. This may seem subtle to the casual observer, but to change the mindset of an organization which, over time, has become increasingly focused on the law enforcement option into one that must first focus on collection is, indeed, transformative.

In Krepinevich’s testimony, he describes the military’s need to transform based on the documented rise of “anti-access/anti-denial threats,” as well as “nontraditional forms of attack” against the homeland.⁶⁰ Krepinevich contends, as do others, that the

⁵⁹ Andrew Krepinevich, “Defense Transformation,” *CSBA Online*, April 9, 2002, The Center for Strategic and Budgetary Assessments, http://www.csbaonline.org/4Publications/PubLibrary/T.20020409.Defense_Transforma/T.20020409.Defense_Transforma.php (accessed December 4, 2008).

⁶⁰ Krepinevich, “Defense Transformation.”

United States will face increasing anti-access and denial operations from countries around the globe as most recently witnessed in offensive operations in Afghanistan. Krepinevich reminds one that while public sentiment was vastly in favor of American military operations in retaliation for the Al-Qa'ida attacks on September 11, 2001, it did not translate to open access to forward bases from which to launch strikes against the Taliban. Given the great strength of the U.S. military is the ability to project power around the globe, this denial of access to forward bases seriously erodes the nation's ability to conduct military operations abroad.⁶¹

A critically important takeaway from Krepinevich's testimony comes from his key question, "Why transform the world's best military?" This question has been asked of the FBI: Why transform the world's premier law enforcement organization? Krepinevich believes that the threats that face the United States today are vastly different than those of the Cold War and merely improving the current capabilities of the force will be insufficient to meet these vast challenges.⁶² The same is true for the FBI. Simply improving the bureau's ability to identify, locate, and arrest perpetrators post-incident will not do. The bureau must take dead-aim at terrorist organizations, criminal enterprises, and foreign intelligence threats proactively using a predictive intelligence capacity to target, collect, exploit, report, arrest, and potentially recruit subjects of terrorism or criminal enterprises.

C. PRIORITIZATION AND DOMAIN AWARENESS

1. Priority versus Threats

Another aspect of the SET process is the issue of priority and how field offices rank the threats within their territories. Each field office has ranked terrorism as the number one priority to reflect the national priorities of the FBI. In remarks made to the International Association of Chiefs of Police in November of 2008, FBI Director Robert

⁶¹ Krepinevich, "Defense Transformation."

⁶² Ibid.

Mueller noted after commenting about the FBI's commitment to improving the cornerstones of the intelligence function, "...We did all this in service of our highest mission—preventing terrorism. That remains the FBI's number one priority and it is not going to change."⁶³ Implementation of the SET process may actually soften that mandate to more accurately reflect the nature of the threat landscape in each division, allowing the SAC of the field office to appropriate investigative resources to address the greatest concern to the area's citizenry.

While the priorities of the FBI are not changing, individual field offices are now required to rank the top three threats as understood by each division after conducting a thorough domain assessment. These threats are not required to be solely about terrorism, and although most are, there is a noticeable rise of violent crime, mortgage fraud, public corruption, and foreign counterintelligence issues, which are vying for investigative action. Given the resurgence of criminal matters in many of the field offices around the country, another change having a positive impact on limited FBI resources is the policy which now allows the field office to factor in the credibility and triage threats, thereby limiting the necessity to deploy agents to investigate the ubiquitous Usama Bin Laden sightings at the local convenience store or the "suspicious male" taking pictures of a city bridge. As the FBI and local police agencies become more experienced addressing threats, agents and police officers are "weeding out" threats which have no merit before they become a drain on resources which are addressing those threats and cases which have more significant credibility rating.

The overarching objectives of the SET process will enable each of the FBI's 56 field offices to use internal analytical and agent personnel assigned to the organic Field Intelligence Group to create products for use by the field office as a whole and for the operational or investigative squads in particular. Additionally, these squads will use these products to create a common operational picture and address the national collection requirements as established by the intelligence community and the Office of the Director of National Intelligence (ODNI). This process will then fulfill an additional objective of

⁶³ Mueller, "Director's Remarks."

establishing a regular cycle for “intelligence-related interaction and information flow” between the FIG which conducts longer term analysis and the investigative squads which collect on and “action” the target.⁶⁴

The SET concept of using intelligence-related information to drive decision making will impact a field office on several fronts: first, it will enable a field office (FO) to divert resources to the most legitimate and highest priority threats; second, it will allow the FO to address threats early in their development; and third, it will enable the FO to refocus limited resources immediately after a threat is addressed or determined to be insignificant.⁶⁵

The decision to address certain threats or focusing resources on specific priorities is not based on guesswork but rather on knowing that the facts support the resource allocation effort.⁶⁶ This process allows the SAC (much like a battlefield commander) to align his or her forces to face the most likely course of action as opposed to reacting to all threats with equal weight, thereby reducing the effectiveness and force of the investigative response.

As a way to ensure field offices are monitoring their domains and threats accordingly, the director is chairing quarterly sessions with each field office’s leadership to review the top three threats as proposed by the office and to ask questions about why the SAC and his or her staff ranked the threats in such a manner. In these sessions, the SAC will be faced with the following questions:

1. What are the most important threats?
2. How is the field office addressing those known threats?
3. What are the territory’s emerging threats?
4. How is the field office addressing the emerging threats?

⁶⁴ Federal Bureau of Investigation, “Strategic Execution Team,” 3.

⁶⁵ Ibid., 4.

⁶⁶ Ibid., 4.

5. What are the highest priorities when factoring in standing, local, and ad hoc requirements?
6. What are the office's capabilities, speed, and confidence?
7. What are the most critical intelligence gaps and plan of attack to address these?⁶⁷

2. National Security Tools Apply to Criminal Threats

During Director Mueller's speech to the International Chiefs of Police in November 2008, he made an important point about a byproduct of the FBI's efforts in utilizing new tools to address national security threats—they apply to criminal matters as well.⁶⁸ Many of the technological advances agents and analysts have used to address terrorism threats will also directly support agents and local law enforcement working criminal investigations. This was heartening news to the chiefs whose local departments are beset by an increasingly violent criminal element and are struggling to keep neighborhoods from falling sway to gangs and drugs.

As an example, the director commented about the use of geospatial mapping technology as a way to visually track crime data from multiple agencies to gain a clear picture of the domain. This technology will allow investigators and analysts see acts of crime, source activity locations, points of interest in open investigations, outstanding warrants, etc. This tool allows agencies to compare crime data to a multitude of other investigative data to reveal connections in a visual way which is a much more productive way to digest information and make decisions about the deployment of resources.⁶⁹

Another way to exploit the experiences gained in national security investigations for use in a criminal capacity is the concurrent task force approach. The director used the Chicago Field Office as an example of how this works: the FBI typically uses an “Enterprise Theory” of investigations to attack organizations from the top down, but

⁶⁷ Federal Bureau of Investigation, “The New Field Intelligence, March 2008 - March 2009” (internal document, Federal Bureau of Investigations, Washington, D.C., March 2008).

⁶⁸ Mueller, “Director's Remarks.”

⁶⁹ Ibid.

given the level of street violence associated with specific gangs, a special, tactical task force was formed to address the lower-level gang violence at the same time while other squads were working on dismantling the leadership. Given that low-level criminals are not “rolled-up” when the leadership is targeted, it was essential that a squad was created to address the immediate violent arm of the organization and do so in a way that did not impact the long-term investigations of the leadership.⁷⁰

This idea has been used to great effect by the U.S. military in Iraq and Afghanistan as military planners have learned that simply removing leaders from organizations is ineffective. Great success has been achieved, however, by simultaneously attacking leadership and foot soldiers, leaving massive gaps in the enemy’s force structure making it impossible to repair in the short-term and much more difficult to replicate in the future.

D. THE MI-5 EXPERIENCE AND FIG CONSTRUCT

The FBI has learned valuable lessons from its dealings with the British Security Service. Nevertheless, the FBI has taken steps to strengthen the role of intelligence analysts both as strategic thinkers, but also as embedded support within the investigative squads. The FBI has created a Field Intelligence Group, which will be the backbone of the every field office’s intelligence and analytical program. FIGs were instituted shortly after September 11, 2001 in an effort to synthesize the intelligence being collected by the bureau, but field offices were given wide latitude when creating their respective FIG, resulting in radically different missions and understanding of the exact role the cell should play within the division. As a result, FIG products were often not applicable to the problem set faced by the field office, but focused on more strategic problems already being addressed by FBIHQ analytical units and other agencies within the intelligence community. This disconnect led to early discontent within the field offices about the utility of their FIG and the overhead it took to staff it.

⁷⁰ Mueller, “Director’s Remarks.”

SET seeks to rectify this process and institute three standardized FIG organizations based on the size of the offices: small, medium, or large. Within the FIG is where the analytical core functions, not entirely dissimilar to the desk officer concept employed by MI-5. The substantial difference in this case, however, is that FIG analysts will not “direct” the case agent; rather, the FIG analyst will suggest collection strategies to the investigative squads and provide intelligence collection requirements to address with sources during routine debriefings. This interaction will occur routinely through a dialogue between the investigative squad’s supervisor, the intelligence analyst, the FIG supervisor, and the case agent.

E. THE HUMAN SOURCE CONUNDRUM

The FBI, without a doubt, has one of the most impressive human source capabilities in the United States intelligence community. With over 16,000 human sources, the FBI collects reams of information from source debriefings every day. Unfortunately, the FBI also consumes a large majority of its own intelligence, so much so that some estimates believe it may be upwards of 85 percent. If this number is accurate, it means only 15 percent of the intelligence gathered by the FBI is making its way into broader intelligence community channels. Exploiting this intelligence is a primary objective of the SET process. Major efforts are being made to ensure agents, through the focused assistance of the embedded analysts on the investigative squads and from the FIG, are making their respective sources think beyond the narrow parameters of their field office level cases. To do this, agents are tasking their sources with national level intelligence requirements that he or she might potentially address based on the source’s nationality, ethnicity, or other professional or social connectivity.

Exposing local sources to national level requirements will enable the FBI to more fully exploit the collection potential of the source and meet the needs of the intelligence community. Furthermore, it may prove to increase the domain awareness picture of the FBI at home as the source exposes additional linkages not known before. To further exploit the access and talents of the human source pool, agents are now required to ask

sources to report across multiple programs. This cross-programmatic reporting acts as a force multiplier as one source can sometimes report on criminal activity, corruption, and foreign counterintelligence simultaneously.

F. JOINT TERRORISM TASK FORCES—A FORCE MULTIPLIER

Long before 9/11 or even the 1993 World Trade Center Bombing, the FBI saw terrorism as a future threat to the homeland. In 1980, the first Joint Terrorism Task Force (JTTF) was established within the FBI's New York Field Office. The JTTF was established to counter a growing, but nascent threat of terrorism around the globe. As agents from the FBI and detectives from the New York City Police Department began to coordinate their investigative actions of terrorist subjects, it became apparent that the combination of federal and local capabilities toward a single-minded goal was the solution to competing interests and to the hue and cry against the FBI for what was perceived as a reluctance to share information with outside agencies.

What began as an ad hoc group of twenty odd federal and local investigators in New York City has grown to a nationwide web of over 4,000 JTTF personnel all dedicated toward the same, single-minded goal: to eradicate the threat of terrorism from the United States. The JTTF is a highly publicized facet of the FBI's role in the battle against terrorism. It's also one of its most successful. The JTTF and the informational exchange body, borne out of it known as the Counterterrorism Executive Board (CTEB), have had an enormous impact on the FBI's ability to combat terror. The CTEB is comprised of the ranking leadership of the agencies which have dedicated personnel to the JTTF and other agency leaders as necessary by region. The CTEB provides both the FBI and the participating agency leaders an opportunity to exchange information and provide updates to the board on the progress of terrorism related cases and initiatives currently being worked by the JTTF.

1. History, Facts, and Figures

The FBI established the first Joint Terrorism Task Force in 1980 within the New York Field Office.⁷¹ Even in those early days of fighting terror, the FBI realized they needed assistance from the front line officers working the streets day in and day out. Bringing state and local law enforcement investigators into the FBI's offices started a new era of information sharing and partnership that would become a model for our current Joint Terrorism Task Forces which are operational in every one of the FBI's 56 field offices nationwide and in many smaller satellite offices as well.

Currently, the FBI JTTF's have expanded their ranks to almost 4,000 investigators. Approximately 2,100 of these are FBI special agents, over 800 state and local task force officers (TFOs), and almost 700 agents and analysts from other federal agencies. This total is more than four times the amount of personnel the task forces had prior to September 11, 2001 and is evidence of the commitment among all the agencies participating.⁷²

While this was a giant step forward in law enforcement and intelligence sharing, a second, equally vital step was necessary to ensure the collective "buy in" of the agencies contributing personnel to this effort. In 2004, the FBI mandated that each field office JTTF institute a Counterterrorism Executive Board comprising the top leadership of every agency contributing personnel to the JTTF. In this way, the FBI can advise the agency heads of ongoing investigations within their respective areas of responsibility (AOR) and ensure information and intelligence obtained as a result of these investigations was being passed to the very decision makers charged with the duty of protecting their respective constituencies. As a result of this mandate, the FBI has ensured that each agency has the most time sensitive and locally focused terrorism

⁷¹ Federal Bureau of Investigation, "Protecting America against Terrorist Attack," *Press Room - Headline Archives*, December 1, 2004, <http://www.fbi.gov/page2/dec04/jttf120114.htm> (accessed September 7, 2008).

⁷² Ibid.

information available as well as providing each leader an overview of the current counterterrorism efforts across the nation and around the world.

2. CTEB Information Exchange

Counterterrorism Executive Boards were also given appropriate opportunities to provide operational input about how to address specific threats.⁷³ Each CTEB establishes the frequency by which these meetings will occur. In most field offices, these meetings occur monthly, but in other offices, less impacted by active terrorism investigations, the meetings may take place no less than quarterly. Threat information developed by the FBI special agents, intelligence analysts, and task force officers is routinely provided to the members of Executive Boards to make them aware of the most recent intelligence and to assist them in their decision-making processes regarding the appropriate response and/or involvement by their agencies on a local level.

Another critically important function of the CTEB's is to ensure each agency head understands the work his or her personnel are doing within the framework of the FBI's investigative mandate. Prior to the formation of these CTEB's, many leaders were unsure how their personnel were being utilized in the JTF's and whether they were receiving any benefit from these assignments. During the CTEB meetings, however, these department heads see the full return of their investment as their officers provide briefings and current intelligence detailing the extent of their agency's involvement via their dedicated task force personnel.

Another aspect of the CTEB is that it provides the FBI specifically and the intelligence community writ large the assurance in knowing critical intelligence information *is* being shared with local, state, and tribal leaders. The FBI is ever cognizant of the criticisms of by others within and outside the law enforcement community about not sharing information and this mechanism ensures these criticisms are addressed.

⁷³ Federal Bureau of Investigation, “Electronic Communication Issuing the Directive to All Field Offices to Establish JTF Executive Boards,” (internal document, Federal Bureau of Investigation, Washington, D.C., 2004).

3. CTEB Mandates

In a communication to all field offices in August of 2004, FBI headquarters identified the need to capture and highlight the activities of the JTTF Executive Boards. With respect to this topic, FBIHQ provided the following guidance to the field:

- JTTF Executive Boards should meet on an as-needed basis, but at a minimum, three times per year.
- Each meeting should be documented.
- JTTF Executive Boards may be comprised of key federal, state, local and tribal law enforcement officials, but at a minimum, should include the heads of law enforcement agencies which have full-time agents and/or officers assigned to the JTTF(s) within the field office territory.
- All board members should maintain a **SECRET** or **TOP SECRET** security clearance to facilitate the dissemination of classified threat information.
- Assistant Directors in Charge/Special Agents in Charge should maintain a system for notifying board members after normal business hours, and on weekends, of fast-breaking threat information.

A critical takeaway from the above guidance is the issuance of clearances to the leadership of those departments dedicating personnel to the JTTF. The FBI, through the U.S. government's Central Clearance Facility has granted over 4,000 secret and top-secret security clearances to law enforcement executives and JTTF members so they have access to the classified information they need to protect their communities. Given the cost of a background investigation needed to issue such clearances can be as much as \$65,000, it is undeniable the FBI has invested huge monetary resources in fulfilling the obligation of ensuring the nation's law enforcement leaders are engaged and have access to critical, classified information.⁷⁴

⁷⁴ Federal Bureau of Investigation, "Electronic Communication Issuing the Directive."

4. The National Joint Terrorism Task Force

As a means to provide leadership and administrative guidance to the increasing number of JTF's throughout the United States, the FBI formed the National Joint Terrorism Task Force (NJTTF) at FBIHQ in 2002.⁷⁵ The primary mission of the FBI is to ensure each JTF is not running independently but working in concert and with a standardized set of business practices. Additionally, as stated on the FBI's website, the role of the NJTTF is "Managing the Bureau's JTF's around the country...there are currently more than 4,000 JTF task force members from over 600 state and local agencies as well as 50 federal agencies."⁷⁶ NJTTF Unit Chief Greg Massa further defines the role as this, "We support each task force in every way imaginable—from sharing intelligence and terrorism threat information to providing big-picture terrorism analysis...from offering guidance and oversight to setting sound program policies...from supplying resources for manpower, equipment, and space to facilitating training."⁷⁷

While the NJTTF does not provide program management of counterterrorism cases in the field offices (this role is left to the Counterterrorism Division's Operations Branch I, International Terrorism Operations Sections One and Two), it does support the JTF's directly through providing invaluable points of contact for members of local JTF's to their senior representatives on the NJTTF. Additionally, with the move of CTD from FBIHQ to the National Counterterrorism Center (NCTC) in McLean, Virginia, the NJTTF (which moved there as well) has access to the most current, complete, and actionable intelligence within the U.S. government and can share this information with JTF's throughout the country. Information of this type, which impacts specific regions within the United States, can be shared with members of the CTEB to give those decision makers information they need to assist in the fight against terrorism.

⁷⁵ Federal Bureau of Investigation, "Protecting America: National Task Force Wages War on Terror," Federal Bureau of Investigation (August 19, 2008), http://www.fbi.gov/page2/august08/njttf_081908.html (accessed September 11, 2008).

⁷⁶ Ibid.

⁷⁷ Ibid.

5. Homeland Security Challenges and Collaborative Solutions

Pivotal to the success of the JTTF writ large and CTEB process, in particular, is the effectiveness of the information exchange at these monthly or quarterly events. The exchange must be fostered on a mutual concern for the priorities, but even deeper, the FBI leadership and the leaders of the various agencies comprising the CTEB must honestly represent to each other their concerns and foster an open dialogue between the agencies in the round. The CTEB meeting should almost always involve the presentation of current investigations and future initiatives and these presentations must be informative, rich in detail, and pertinent to a concern, which has direct impact on the regional area of operations. These presentations must have defined goals and objectives and investigative counsel should be sought from the veteran audience. The FBI hosts would be wise to remember the members have been vested with a costly and binding security clearance and should exploit this clearance to ensure the members are taking away valuable information that they can use to target their patrols and sources in an effort to thwart attack or collect vital intelligence.

The CTEB members should be reminded that they, too, have a responsibility to provide the JTTF information about what their agencies are seeing and hearing from their daily interactions with the public and these leaders must ensure their “ground troops” are reporting this information to their representative on the JTTF. Without this notification, the JTTF and CTEB will ultimately prove ineffective and the force-multiplier concept of the embedded task force officers will be lost. Too often and unnecessarily, agency heads become frustrated by their lack of understanding and awareness of what their dedicated JTTF personnel are doing and further, what cases are being worked which impact their jurisdictions. A primary reason for this frustration is that the agency head delegated down his or her role on the CTEB to a subordinate, and, subsequently, that person fails to address the pertinent issues at the meeting and then does a further disservice by not fully briefing up the results of the meeting or not briefing at all. While this is not the majority within the CTEB, it presents a large enough problem that it can adversely impact smaller JTTF’s in that the agency head may become so frustrated that he or she pulls his

participating investigator or analyst from the JTTF even further isolating them from pertinent threat and case-related terrorism information.

Local politics, access to information, and clearance issues recently drove a wedge between the FBI and the city of Portland. In late April of 2005, the city council of Portland, Oregon voted to remove its two Portland city police officers from the JTTF. This council decision was supported by the mayor, Tom Potter who was a former Portland Police Chief and who had not received a Top Secret Clearance, which would have allowed him to properly oversee the activities of the officers on the JTTF. The mayor went on further to say, “When we look at our history, we see examples that when we blindly give people power, that sometimes the power is misused.”⁷⁸ In more than 100 other cities that have JTTFs, these kinds of concerns have never emerged.⁷⁹

One other issue that has presented difficulties within the JTTF’s is the inability of Task Force Officers from state and local agencies to be properly evaluated by their first line supervisor. Typically, a Task Force Officer has a direct supervisor in his or her parent department, which is not a member of the JTTF and, therefore, has not been granted a security clearance. Clearly, it would be cost prohibitive and unwieldy to provide Top Secret Clearances for every member of the member officer’s chain of command, but this presents a problem when the supervisor conducts his or her annual evaluation of the officer’s performance.

By all accounts, Counterterrorism Executive Boards have provided the FBI a critical venue by which to share time sensitive intelligence and threat information to FBI partners in state, local, and tribal law enforcement. The core of this project is to ensure the hard and dangerous work of intelligence collectors and terrorism investigators is

⁷⁸ Susan Chenelle, “Portland Gives Joint Terrorism Task Force the Boot,” *The Indypendent*, May 11-25, 2005, <http://www.srcnyc.com/portlandjttf.html> (accessed September 11, 2008).

⁷⁹ Douglas Hagmann, “Portland, Oregon: A Sleepy City or City of Sleepers, Northeast Intelligence Network,” *Northeast Intelligence Network*, June 6, 2005, <http://www.homelandsecurityus.com/Portland060505> (accessed September 11, 2008).

shared with law enforcement leaders across the country and through this multi-organizational approach, this sharing of information clearly compounds the nation's ability to protect itself against terror.

G. INCREASING OPERATIONAL CAPABILITIES

Over the last seven years, the FBI has increased the number of specialized sections and units at headquarters to address areas that were either understaffed or non-existent prior to September 11, 2001. One of these newly created units is the Counterterrorism Watch or "CT Watch." CT Watch is a 24/7, 365-day a year unit, which stood up to act as the intake for all threats coming into the FBI through a myriad of sources.

CT Watch is linked to all of the FBI offices electronically through normal FBI systems and through a database named "Guardian." Guardian is the database into which all terrorism threats are loaded for tracking and review by FBIHQ and the field office responsible for addressing the threat. CT Watch also monitors all intelligence community reporting and immediately notifies FBI leadership and field offices in the event a threat is received. CT Watch also acts as an "after hours" investigative staff conducting investigative research for use by investigators when they arrive into the office or receive the threat.

Attacking an enemy's ability to move and access funds was the genesis for creating the Terrorism Financing Operations Section (TFOS) within Counterterrorism Division. TFOS is broken down into multiple units addressing specific terror groups resulting in a cadre of very experienced investigators and financial analysts who know their target groups and the methods those groups use to move funds in support of terrorist acts. TFOS works closely with the Department of Treasury's Office of Foreign Assets Control (OFAC) and State Department to designate groups as terror organizations based on a group's association with tainted funds and their knowledge of what those funds are supporting.

TFOS also works closely with foreign governments who lack the forensic financial tools used by the FBI and this partnership is critical to stopping the flow of funds overseas in locales difficult to access. In response, these governments have enlightened the FBI in ways money is moved without legitimate banking systems such as “hawalas,” which are based on a voice-trust system of “hawaladars” who receive and lend money based on known associations.

The Counterterrorism Internet Targeting Team is another recent creation within Counterterrorism Division which specifically targets the proliferation of jihadist propaganda on the internet and attempts to stop the destructive spread of information concerning bomb-making technologies, attack planning, and other criminal uses of the internet by terrorist groups. CITU works jointly with members of the IC to target those organizations using the internet to radicalize and influence others to commit acts of violence.

In 2002, the FBI created the “Fly Team,” which is an asset totally organic to Counterterrorism Division and provides CTD the capability to “force project” investigators into field offices needing assistance or foreign countries requesting immediate FBI assistance. Fly Team Special Agents are specially trained and have an enhanced survivability aspect that makes possible their deployment to inhospitable areas. Trained in the use of state of the art biometrics collection platforms, languages, and evidentiary collection techniques in battlefield conditions, the Fly Team is a critical component of the FBI’s partnership with military forces around the world.

Databases such as the “Guardian Threat Tracking System” and the recently released “eGuardian” system are addressing a demonstrated need to input, assign, investigate, track, and mitigate threats across the entire FBI. The Guardian system allows an agent, task force officer, or analyst from any FBI office to input incoming threat information and assign it to the appropriate user whether it is within that field office or any of the other offices or legal attaché officers throughout the world. These threats are monitored by the field office, CT Watch, and the Threat Monitoring Unit within Counterterrorism Division to ensure a quick and appropriate investigative response. The

new eGuardian system is a replica of the successful Guardian database, but it is for use by state, local, tribal, and other federal partners who can input threat information into a shared database for use by the FBI and fusion centers. The key to this system is the linkage it builds between the Joint Terrorism Task Forces and fusion centers with other state, local, and tribal law enforcement partners.⁸⁰

Another way the FBI is transforming the workforce is by creating agent and analyst career development programs as required by the Intelligence Reform and Terrorist Prevention Act of 2004. As stated in the act:

The Director shall —

(A) establish career positions in national intelligence matters for agents, analysts, and related personnel of the Bureau; and

(B) in furtherance of the requirement under subparagraph

(A) and to the maximum extent practicable, afford agents, analysts, and related personnel of the Bureau the opportunity to work in the career specialty selected by such agents, analysts, and related personnel over their entire career with the Bureau.⁸¹

To fulfill this requirement, the FBI's Human Resource Division (HRD) works with "substantive divisions" to develop career path plans and associated training for both agents and analysts to ensure they obtain the training and experiences they need to succeed throughout their careers. For FBI special agents, HRD has developed a four-stage process, which begins at an agent's entry level position of GS-10 through his or her "journeyman" rank of GS-13. Stage one begins during an agent's training as a trainee at the FBI Academy and ensures agents are given extensive training in both criminal and national security matters. Stage two begins after the agent's graduation from New Agent Training throughout his or her probationary agent period. In this stage, new agents are assigned a variety of required on the job tasks covering the entire spectrum of agent

⁸⁰ Federal Bureau of Investigation (internal document, Federal Bureau of Investigation, Washington, D.C., February 9, 2009).

⁸¹ *Intelligence Reform and Terrorist Prevention Act of 2004*, 108th U.S. Cong. (December 17, 2004).

responsibilities. A probationary agent must accomplish these required tasks to be removed from probation and also begins focusing on some career path specific training in preparation for stages three and four.⁸²

Stages three and four are from three to five years and five plus years, respectively. During these stages, agents receive intensive training and assignments specific to their designated career paths and field offices are required to monitor the workforce to ensure a minimum of 80 percent of agents are working within their selected path.⁸³

This process is not entirely dissimilar to the way the military selects officers for specific branches within a service. The U.S. Army, for example, requires officers to choose their desired “branch” within the service and places the officers in one of these branches based upon needs of the Army and the skills and strengths of the individual officer. Given the Army has a number of specific career branches which make up the overall force, officers are required to attend branch specific training which ensures the officer is fully educated prior to being sent out the field for new assignments.

The bureau and military methods are different in two major ways: 1) The FBI depends largely on “on-the-job” training to create a skilled agent workforce as opposed to the military which has specific and comprehensive schools for every occupational specialty within the many branches of each military service; and 2) the FBI currently has no career manager who ensures an individual agent is exposed to management opportunities, and if he or she chooses a managerial position, there is no career manager to guide the agent supervisor to appropriate positions throughout his or her career.

Within the military, the services detail officers to serve as “branch or assignment managers” whose sole job is to track specific officers and ensure they are receiving the training and assignments which fit the skills and needs of the service and give each officer the best opportunity to compete for promotion and coveted assignments within

⁸² Federal Bureau of Investigation, “Special Agent Career Path Program,” FBI Careers, <http://www.fbijobs.gov/113.asp> (accessed March 7, 2009); Federal Bureau Investigation “The FBI’s Counterterrorism Program Since September 2001,” (internal document, Federal Bureau of Investigations, Washington, D.C., February 2004).

⁸³ Federal Bureau Investigation, “The FBI’s Counterterrorism Program Since September 2001.”

their respective branches. This provides officers clearer understanding of the opportunities for future assignments and an unbiased view of what jobs will make the officer more competitive for specific military commands.

The analytical workforce has a somewhat different career path plan and as opposed to numerical stages, the analyst goes through early, intermediate, and advanced stages of training throughout his or her career. These training sessions, held at the FBI Academy in Quantico, must remain aligned with the guidance used by the Office of the Director of National Intelligence (ODNI), FBI analysts must develop the following competencies:

- Critical thinking
- Communications
- Engagement and integration
- Accountability for results
- Personal Integrity and leadership⁸⁴

In much the same way as FBI special agents, analysts are required to serve in a variety of positions to round out the skill set needed to be successful. The buildup of the analyst workforce has outpaced the FBI's ability to provide initial and advanced training needed, but the Directorate of Intelligence, which serves as the parent organization for all analysts within the FBI, is currently creating and modifying both the educational and assignment requirements for the analysts to capitalize on this highly educated segment of the FBI workforce.⁸⁵

H. CONCLUSIONS

The FBI is making real progress in fulfilling its mandate of serving the United States as both a domestic intelligence agency and as the country's premier federal law

⁸⁴ Federal Bureau Investigation, "The FBI's Counterterrorism Program Since September 2001."

⁸⁵ Ibid.

enforcement agency. This progress is not without setbacks, and it will take additional time and money to invest in training and hiring personnel, creating the systems needed to produce a predictive intelligence picture, and refining both the personnel and systems to adapt to new threats and to embrace new adaptations of the systems to address all programs.

Systems built to assist the FBI in the national security arena are proving to be effective in detecting and preventing other criminal activity. The FBI should endeavor to create systems and platforms that are suitable to conduct multiple capacity missions, thereby increasing their functionality and thereby limiting the amount of system specific training necessary for users.

Through the implementation of the SET process, the adaptation of certain aspects of military processes to create positive transformative effects, and establishing systems and a workforce which is efficient, educated, and skilled to encounter the threats of tomorrow, the FBI is making important and marked progress in its evolution.

V. CONCLUSIONS AND RECOMMENDATIONS

A. EMBRACING CHANGE AND PRESERVING CULTURE

Governmental institutions endure the tumult of history for a number of reasons, not the least of which are relevancy, maintaining public trust, providing a unique service that cannot be replicated, and the ability to adapt to changing times. The FBI has been thrust into a new era of change brought about by the terrorist acts of September 11, 2001. More than seven years have passed since the events of that day, but the vulnerabilities exposed by those 19 hijackers and their support network abroad continue to produce change within the FBI and the entire framework of the United States intelligence community.

1. Relevance

The FBI maintains relevancy as an organization in two ways. First, it receives its broad authority from Presidential directives and statutory sources within the U.S. Code to investigate approximately 300 violations of federal law ensuring the agency retains a critically important role as the primary investigative arm of the federal government. Second, the FBI executes its responsibilities with professionalism and success in both national security and criminal investigations. The Attorney General Guidelines for FBI domestic operations clarifies the bureau's role as the primary investigative arms of the federal government:

As the primary investigative agency of the federal government, the Federal Bureau of Investigation (FBI) has the authority and responsibility to investigate all violations of federal law that are not exclusively assigned to another federal agency. The FBI is further vested by law and by Presidential directives with the primary role in carrying out investigations within the United States of threats to the national security. This includes the lead domestic role in investigating international terrorist threats to the United States, and in conducting counterintelligence activities to meet foreign entities' espionage and intelligence efforts directed against the United States. The FBI is also vested with important functions in

collecting foreign intelligence as a member agency of the U.S. Intelligence Community. The FBI accordingly plays crucial roles in the enforcement of federal law and the proper administration of justice in the United States, in the protection of the national security, and in obtaining information needed by the United States for the conduct of its foreign affairs. These roles reflect the wide range of the FBI's current responsibilities and obligations, which require the FBI to be both an agency that effectively detects, investigates, and prevents crimes, and an agency that effectively protects the national security and collects intelligence.⁸⁶

As long as the FBI maintains the trust of the policymakers as an independent, honest, and professional agency, as well as maintaining the trust of the people for whom it serves, it will remain an organization deeply woven into the fabric of American life and the preservation of it. The FBI will encounter difficulties; however, if it is unable to incorporate the intelligence processes outlined by the SET initiative or if it fails to produce a capable predictive intelligence capacity.

2. Maintaining the Public Trust

There are certain occupations in American life that draw interest from the public, and serving as an FBI agent is one of those occupations. Fortunately, the workforce at the FBI was stricken with the same curiosity. Employees at the FBI tell strikingly similar stories about childhood dreams of being a special agent and many have shaped their entire lives to meet the rigid requirements of the bureau. The desire and ability to meet these requirements instills a sense of pride in the organization and esprit de corps among colleagues. This desire to serve is what shapes the way the bureau serves—honestly, humbly, and passionately. These ideals create an organization that is inherently conscious of its responsibility to serve the public, not coerce it. This makes the FBI precisely the right institution to execute the domestic intelligence function of the United States.

Some observers believe the FBI is ill-suited to function as the nation's domestic intelligence agency because of its dual role as a law enforcement agency. This premise is false for several reasons. First, an agency that understands the rule of law and can apply

⁸⁶ Michael Mukasey, *The Attorney General's Guidelines for Domestic FBI Operations* (Washington, DC,: Department of Justice, 2008)

it to its investigations is precisely the right agency to implement the authorities necessary to collect intelligence legitimately and legally and to protect the public and prevent criminal and terrorist acts. Conversely, an agency that has no concept of legal process or one that needs no predication to conduct intelligence gathering operations is much more likely to “over-collect” and abuse authorities than one that adheres to a long-standing tradition of operating within a legal framework such as the Attorney General Guidelines for domestic intelligence.

Public trust in the FBI to investigate significant violent crime, prevent terror, and protect them from corrupt corporate and public leaders is based on the FBI’s adherence to the Constitution and the authorities granted to it. The Attorney General Guidelines states:

All activities under these Guidelines must have a valid purpose consistent with these Guidelines, and must be carried out in conformity with the Constitution and all applicable statutes, executive orders, Department of Justice regulations and policies, and Attorney General guidelines. These Guidelines do not authorize investigating or collecting or maintaining information on United States persons solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States. These Guidelines also do not authorize any conduct prohibited by the Guidance Regarding the Use of Race by Federal Law Enforcement Agencies.⁸⁷

The FBI maintains a set of core values set forth first by Director Freeh and reinforced by Director Mueller that stresses the agency’s concern for protecting the civil and legal rights of the American public. Those core values are:

- Rigorous obedience to the Constitution of the United States;
- Respect for the dignity of all those we protect;
- Compassion;
- Fairness;
- Uncompromising personal integrity and institutional integrity;

⁸⁷ Mukasey, *The Attorney General's Guidelines for Domestic FBI Operations*.

- Accountability by accepting responsibility for our actions and decisions and the consequences of our actions and decisions; and
- Leadership, both personal and professional.⁸⁸

3. Providing a Unique Service

In a message written in a recent journal published to commemorate the FBI's 100 years of service to the nation, Director Mueller encapsulated in a paragraph, and speaks directly to what makes the FBI such a unique institution:

One hundred years ago, a new federal investigative force, the Bureau of Investigation, was created under the Department of Justice to protect America against federal crimes and to ensure justice for all citizens. In 1935, the agency became known as the Federal Bureau of Investigation. From its earliest days, the FBI successfully confronted crime, corruption and terrorism. The Bureau's reputation grew and the dedicated men and women serving within its ranks gained recognition as skilled and consummate professionals. Today, the FBI is among the world's few intelligence and law enforcement agencies that combine both of those disciplines within one organization. All of us in the FBI are proud to be a part of this enduring legacy.⁸⁹

Similarly, the Attorney General provides the following statement regarding FBI authorities and responsibilities: "The FBI is an intelligence agency, as well as a law enforcement agency. Its basic functions accordingly extend beyond limited investigations of discrete matters, and include broader analytic and planning functions."⁹⁰ There is no other agency within the United States government that is capable to perform the wide array of special duties and investigative authorities required to keep America safe from the threats facing it. To maintain this trust, the FBI must continue to balance the needs of creating a predictive intelligence capacity, while safeguarding the individual rights of the citizens it has sworn to protect.

⁸⁸ Federal Bureau of Investigation, "Quick Facts," Federal Bureau of Investigation, <http://www.fbi.gov/quickfacts.htm> (accessed February 21, 2009).

⁸⁹ Robert Mueller, "Message from Director Mueller: The FBI Commemorates 100 Years of Service," *Federal Bureau of Investigation - 100 Years of Protecting America, 1908 - 2008* (Tampa, FL: Faircourt Media Group, 2008), 3.

⁹⁰ Mukasey, *The Attorney General's Guidelines for Domestic FBI Operations*.

4. Adapting to Change

This thesis described the transformative changes ongoing within the FBI to protect the United States and its interests abroad from a myriad of multi-spectrum threats. Despite arguments that suggest the FBI is taking too long to transform or is incapable of doing so, the FBI has proven its resiliency resilient throughout its 100 year history and has proven it can adapt itself to meet the challenges of the day. The following is a short list of major changes that forced the FBI to refocus investigative resources or take on new responsibilities:

- Early interstate criminal activity (circa 1908)
- Espionage Act / Anarchists / Violent labor protests (circa 1914)
- Kidnappers / Auto theft (circa 1919)
- Comprehensive Identification Facility (circa 1924)
- Interstate crime / Bank Robbery / Gangs / Kidnapping (circa 1930)
- Spies and saboteurs (WWII) (circa 1936)
- Espionage (circa 1947)
- Organized crime / Public corruption (circa 1970)
- Domestic security activities (circa 1976)
- Gang violence / Drugs (circa 1982)
- Terrorism (circa 1987)
- Significant corporate fraud (1990s)
- Terrorism / Domestic intelligence refocus (2001)⁹¹

The FBI as an organization is capable of changing to meet current challenges. What makes change difficult, however, is that with each new assumption of responsibility

⁹¹ Federal Bureau of Investigation, “FBI History,” Federal Bureau of Investigation, <http://www.fbi.gov/libref/historic/history/historicdates.htm> (accessed March 10, 2009).

can require more personnel, more dynamic systems, or more education to ensure the agency keeps apace of the growing requirements to keep America safe. To accomplish this process of adaptation, Director Mueller recognized early in his tenure what was needed:

Since becoming Director, I have been able to observe firsthand the volatile environment in which the FBI is called to operate. I have become increasingly convinced that success in the post-9/11 environment depends upon the FBI becoming more flexible, agile, and mobile in its capacity to respond to the array of difficult and challenging national security and criminal threats facing the United States. The FBI must become better at shaping its workforce, collaborating with its partners, applying technology to support investigations, operations, and analyses protecting our information, and developing core competencies.⁹²

Although the FBI faces the same rigidity found in any bureaucracy, the talent and dedication of the investigative workforce makes it possible for the agency to adapt to defeat the new threats facing the country.

B. RECOMMENDATIONS

To transform the FBI not only to meet the challenges of terrorism and other non-linear threats of the next century, but also to make these transformational changes adaptable to the entire bureau, the FBI must build legacy systems that support this period of change. The following recommendations can help this process of transformation.

1. Establish Doctrine

The FBI should begin creating a comprehensive library of doctrinal information for the terrorist groups and criminal enterprises it faces. The U.S. intelligence community has amassed a vast quantity of information about terrorist organizations and the

⁹² Robert Mueller, “Statement of FBI Director Robert Mueller: A New FBI Focus” (Washington, DC, 2002).

techniques, tactics, and procedures they use to conduct their operations. The FBI can use this information to establish doctrine for each group which they can then use to train agents and analysts.

In much the same way the military uses enemy doctrine to train its intelligence officers and analysts to determine enemy courses of action, so too can the FBI produce doctrine to provide agents a baseline of understanding about how specific terrorist organizations form, raise funds, train, travel, maintain anonymity, and conduct direct actions. Simply asking the field offices to conduct proactive intelligence gathering operations to thwart terrorism is insufficient without an adequate understanding of how the groups these agents and analysts face actually function.

2. Create an Advanced Investigative Training Program and a Center for Agency Lessons Learned

If the FBI is to retain its leadership role in federal law enforcement and establish a predictive domestic intelligence capability, then it must dedicate itself to a long-term educational program for the agent and analyst workforce. For too long, the FBI has depended too much on the pre-existing skills of its newly hired agent and analyst workforce. With an average hiring age of approximately 30 years, agents have been expected to enter the service with enough education and life skills to adequately serve the needs of the bureau regardless of which investigative program the agent is assigned. While this is a credit to the talent which the bureau attracts, the agency does its employees a disservice by not providing similar specific advanced “institutional” or “school house” training used by its military colleagues.

As the bureau is placing more emphasis on joint assignments with other services and providing increased opportunities for advanced civil and military schooling, the FBI must retool its organic educational and training programs at the FBI Academy in Quantico, Virginia to provide investigative specific training such as the utilization of doctrine as discussed in Recommendation One, above. For many years, FBI training has consisted primarily of ‘in-service’ training sessions held in various locations throughout

the United States with little thought to the timing and methodology involved. By recreating mission-specific and mandatory educational forums at the FBI Academy or some other suitable venue, the FBI can better govern the content, timing, and reach of its educational efforts.

To take another lead from the United States Army, the FBI also should create a center for agency lessons learned, similar to the U.S. Army's Center for Army Lessons Learned (CALL). This center would provide reports, publications of completed investigations, and doctrinal updates to the FBI Academy for incorporation into the advanced training syllabi for the investigative workforce. This center would act as a feeder to the FBI Academy to ensure the instructors are always up to date with groundbreaking investigative strategies, the investigative application of new or amended authorities by special agents, and updated information concerning the tactics used by terrorist groups and criminal organizations.

3. Create a Leadership Development Program

Leading an agency as large and diverse as the FBI through the transformational process will require capable and visionary leaders. One of the ways to do this is to create a leadership development program suitable for shaping the future of the FBI for the next century. As with Recommendation Two above, this program should combine the opportunities of joint service schooling, advanced civil schooling, but most importantly, organic leadership education at the FBI Academy.

As with the demonstrated need for career path monitoring, leaders also should be required to meet certain educational gates at significant leadership points throughout their careers. The FBI should allocate monies to build a new wing at the FBI Academy specifically tailored to accommodate leadership education for FBI supervisory personnel.

Significant educational gates should be accomplished at the entry Supervisory Special Agent (SSA/GS-14) rank, the Assistant Special Agent in Charge (ASAC/GS-15) rank, and the Special Agent in Charge (SAC/SES) rank to ensure future leaders are prepared to assume the responsibilities of their position when they arrive at their assigned

field office. While the bureau is fortunate to have an educated and motivated workforce, some responsibilities related to supervisory positions are not taught prior to the agent being placed into that position. Most tasks have little to do with the investigative or leadership aspects of the job rather they are highly administrative and peculiarly bureau-specific tasks which should be learned prior to assuming the supervisory role. This sort of training is critical to ensure future leaders can make an immediate impact upon arrival into a leadership position.

4. “Fuse” Field Intelligence Groups and Fusion Centers

As the nation draws further away from September 11, 2001, the federal government may soon look to reduce the costs associated with the continued funding of fusion centers. The federal government has had little say about how many fusion centers should exist within a given state. This has led to the creation of “competing fusion centers” in some states.⁹³

Fusion center funding will look progressively more attractive to reduce, or even cut altogether, unless fusion centers begin producing intelligence products that are relevant to their consumers who have been unimpressed with the frequency and relevance of fusion center and federal government products as a whole.⁹⁴ A GAO report published in November 2007, for instance, found that only two of the 43 then operational fusion centers are solely dedicated to terrorism. The vast majority of fusion centers are focused on street crime or natural hazards such as hurricanes.⁹⁵

If federal assistance is withdrawn from fusion centers it is unlikely that states and local governments would be able or willing to pay for the full costs associated with

⁹³ John Rollins, *Fusion Centers: Issues and Options for Congress* (Washington, DC: Congressional Research Office, 2008).

⁹⁴ Matthew Harwood, “Congress Gets Report Card on Homeland-Security Information Sharing, Security Management,” Security Management - Security’s Web Connection (September 24, 2008), <http://www.securitymanagement.com/news/congress-gets-report-card-homeland-security-information-sharing-004688> (accessed March 10, 2009).

⁹⁵ U.S. Government Accountability Office, *Homeland Security - Federal Efforts Are Helping to Alleviate Some Challenges Encountered by State and Local Information Fusion Centers* (Washington, DC: Report to Congressional Committees, 2007).

operating them and what could have been an instrumental platform for information sharing would cease to exist. A potential solution to the total dissolution of fusion centers, however, is to combine them with the FBI's Field Intelligence Groups (FIG) in a manner similar to the Joint Terrorism Task Forces (JTTF). While the JTTF functions in an investigative capacity, the FIG/fusion centers would do so in an analytical way, taking the information and intelligence collected from national level/intelligence community reporting, JTTF investigations, and state and local law enforcement operations and using these sources to create a more complete intelligence picture for the consumer.

Currently, many fusion centers have little to no access to actual investigations being conducted by the FBI's JTTF operating in their area. This is due to classification and "need to know" restrictions and often laws that prohibit the sharing of certain U.S. person information with non-law enforcement personnel. It seems unrealistic for fusion centers to "fuse" intelligence when they do not have access to what is usually the only body of investigators which actually produces terrorism-related information.

In January 2008, John Rollins of the Congressional Research Office wrote a report for congress regarding the issues and options for fusions centers. One of the suggested options set forth by Rollins was the expansion of the FBI Field Intelligence Groups to assume the full analytical function for the federal government and moving the fusion center "all hazards" mission to FEMA. Rollins wrote:

Expand the FBI FIGs to be the Federal Strategic Analysis Fusion Centers. Although provocative and radical, fusion center critics might argue that fusion centers are superfluous insofar as the primary federal benefit they seek to provide is prevention of manmade (terrorist) attacks (a traditional federal agency role) and/or destabilizing crime (gangs, narcotics, etc. — both a federal and SLT responsibility). Those who subscribe to this school might argue that state and regional fusion centers could be eliminated and federal agencies take over all the functions those centers once performed, with intelligence and counterterrorism related work going to the FBI, and the all-hazards functions adopted by some fusion centers turned over to FEMA or the state/local agencies that traditionally handle natural disasters. The counter to this argument is that a changed threat environment requires non-traditional thinking — designed to prevent and respond to terrorist attacks and respond efficiently and effectively to

substantial natural disasters. Nevertheless, the argument that fusion centers may represent an organizational solution to a functional information sharing and analysis problem can still be made.⁹⁶

As part of this combined mission, analysts assigned to the fusion centers could “strip” identifying subject and target information from ongoing investigations and provide the pertinent attack methodologies to state, local, and tribal law enforcement authorities. This information is actually useful to the officer working the street. During a hearing before the Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, Sheriff Leroy D. Baca of Los Angeles County said the federal government keeps relevant information from the cop on the street, resulting in a lack of situational awareness.⁹⁷

To address this shortcoming, the FIG/fusion center merger could provide this “precursor” information by combining the results of FBI investigations to the street cop using the connectivity of the state and local fusion centers. This type of dissemination is happening now in only an ad hoc fashion and typically in areas where there is a close working relationship between the FBI and fusion center.

By overcoming the bureaucratic obstacles to create this Joint Analytical Task Force, federal, state, local, and tribal intelligence consumers can have access to relevant and timely intelligence products that span the entire spectrum of crime problems currently facing the United States. Agents and analysts across all levels of government could collaborate analytically the same way agents, analysts, and task force officers do so with investigations in the JTTF’s. With FBI oversight, these JTAF’s would use a common framework, guidelines, and dissemination standards which continues to elude the various local, county, and state fusion centers throughout the nation.

⁹⁶ Rollins, *Fusion Centers: Issues and Options for Congress*.

⁹⁷ Harwood, “Congress Gets Report Card on Homeland-Security.”

C. “NEVER DONE TRANSFORMING”

The FBI is an organization uniquely suited to accomplish the roles as both a domestic intelligence agency and a law enforcement organization. This is not simply because the FBI is transforming itself to do so, but also because terrorism, criminal acts, and intelligence are interwoven so deeply that separating them would be to ignore every hard won lesson since 9/11. The FBI has a dual role as both a law enforcement organization and an intelligence agency. To separate these functions would be to embrace an idea that law enforcement powers are not necessary in the pursuit of domestic intelligence investigations and would seriously erode the nation’s ability to use all legal investigative techniques to counter those who are willing to exploit any weakness in America’s defenses. The FBI has proven its ability to transform to meet the law enforcement and domestic intelligence needs of the United States throughout its hundred-year history. In this last century, the FBI has given the American people every reason to support and believe it can again transform itself to meet this new challenge and secure the public trust for the next century.

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